

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1689 OF 1993

PHILIPS EMPLOYEES' UNION,
BOMBAY

)..Petitioner

V/s

1. Mr. B.N. Som & Ors.

)..Respondents

INDEX

SR. NO.	PARTICULARS	PAGES NOS.
	Proforma	A-D
1	Petition dated	1-15
2	Vakalatnama dated	16
3	Memo of Address	17
4	List of Documents	18
5	EXHIBITS:	
	Exhibit 'A' - Bill dated 29.3.93 introduced in Rajya Sabha	19-26
	Exhibit 'B' - Letter Reference No. PEU:PF:93:123 dated 17.3.93	27
	Exhibit 'C' - Copy of Advertisement in 'Sunday Mail' dated May 2 - 8, 1993	28
	Exhibit 'D' - Notice dated 4.5.1993	29-31
	Exhibit 'E' - Letter No. SM/1631/F-24 dated 11.5.1993	32
	Exhibit 'F' - Letter Reference No. BA/2876/F-24/93 dated 2.8.93	33
	Exhibit 'G' Comparative chart of the impugned advertisement	34-36
6	Affidavit in support of the Petition dated 30.08.1993	37-38

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1689 OF 1993

In the matter of :

a) Article 226 of the Constitution of India

AND

b) Employees' Provident Funds & Miscellaneous Provisions Act, 1952;

AND

c) Proposed Employees' Pension Scheme;

AND

d) Public Advertisement issued by the Central Provident Fund Commissioner, New Delhi.

PHILIPS EMPLOYEES' UNION,
BOMBAY, having its Registered
Office at C-3, Anagha
Co-operative Housing Society,
Sarojini Naidu Road,
Mulund(West), Bombay 400 080 ... Petitioner

22
V/s

- 1 Shri B.N. Som
Central Provident Fund Commissioner
Mayur Bhavan,9th Floor
Connaught Circus
New Delhi.
- 2 Central Provident Fund Commissioner
Mayur Bhavan,9th Floor
Connaught Circus
New Delhi 110 001.
- 3 Union of India
Thro' the Secretary,
Ministry of Labour
Shram Shakti Bhawan
New Delhi. ... Respondents

1 The Petitioners are a Trade Union registered under the provisions of Trade Union Act,1926, and also recognised under the provisions of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act,1971. This petition is being filed in public interest.

2 The 1st Respondent is the present incumbent in the Office of Central Provident Fund Commissioner who appears to have been personally responsible for issue of an advertisement in a weekly called Sunday Mail dated May 2-8, 1993. The 2nd Respondent is the

3

Office of Central Provident Fund Commissioner which has officially issued the concerned advertisement. The 3rd Respondent is the Union of India under whose jurisdiction, control, supervision and direction the 1st and 2nd Respondents are functioning.

3 The 3rd Respondent has introduced a Bill titled "THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 1993 - Bill No. XXIV of 1993 in the Rajya Sabha on 29th March 1993. By the said Bill the provisions of Employees' Provident Funds & Miscellaneous Provisions Act, 1952, is proposed to be amended to facilitate introduction of a Scheme called Employees' Pension Scheme (hereinafter referred to as the Scheme). A copy of the said Bill is annexed hereto and marked EXHIBIT 'A'. The 3rd Respondent proposes to bring into effect the Scheme with effect from 1st April 1993. Although the said Bill has been introduced in the Rajya Sabha, the same has not yet been introduced in the Lok Sabha. The Scheme has not yet been announced officially. However, the Office of the 2nd Respondent has brought out a Booklet called "Employees' Pension Scheme", which is not publicly available. Annexed hereto and marked EXHIBIT 'B' is a letter no. PEU:PF:93:123 dated March 17, 1993, by which the petitioner Union requested the 2nd Respondent to make available a copy of the proposed Scheme so that the petitioner Union could study the proposed Scheme and determine whether the Scheme is

EXHIBIT 'A'

EXHIBIT 'B'

4
beneficial in any way or not. No reply was received nor a copy of the proposed Scheme made available to the petitioner. The petitioner, however, managed to obtain a copy of the booklet of the Scheme. The petitioner craves leave to refer to and rely upon the copy of the Booklet when produced.

4 A study of the proposed Scheme indicates that the proposed scheme involves substantial loss to about 98% of the subscribers to the Provident Fund. The petitioner has, therefore, been making every effort to oppose bringing into effect the said Scheme atleast in the present form. In this effort the petitioner has met the Office bearers of the Central Trade Unions who were allegedly parties to the formulation of the Scheme, and several Members of Parliament. The petitioner Union has also held several Seminars, Workshops and Press Meets where the detrimental effects of the proposed Scheme have been explained to a large number of workers who are likely to be affected by the introduction of the Scheme. Some other Unions and individuals also have expressed serious objections to the Scheme. As if to counter such criticism, the 1st Respondent issued substantially prominent advertisement in a weekly called Sunday Mail dated May 2-8, 1993 published from New Delhi, Bombay, Madras and Calcutta. A copy of the advertisement is annexed hereto and marked EXHIBIT 'C'. A Hindi version of the said advertisement might have appeared in other editions of the Sunday Mail or some other

EXHIBIT 'C'

newspapers/periodicals. It is possible that the 1st Respondent might have issued several more such advertisements.

5 No advertisement is expected to create a favourable impression by giving only so-called positive aspects of the product. Such an advertisement is considered as unethical. In the case of financial investments, financial institutions are expected to state the true position so that the investor is fully equipped with the information before he takes a decision to invest his money. In the case of new issues the Promoting Company is expected to prominently state the risk factor as perceived by the promoting company. In the instant case, a worker is forced to invest part of his hard-earned wages in a very long term Scheme without knowing the full implications of the Scheme. The 1st & 2nd Respondents have deliberately refused to give even a copy of the Scheme officially, but at the same time, they are volunteering and in fact, advertising only favourable aspects of the Scheme without giving the information relating to unfavourable aspects of the Scheme. Thus, the 1st & 2nd Respondents are deliberately trying to mislead innocent and ignorant workers by giving such one-sided advertisements. The 1st & 2nd Respondents are statutory authorities and are expected to function fairly and in a reasonable manner. By issuing this advertisement they are not only not observing the precautions observed by even a private promoter

but also not acting fairly and reasonably as they are expected to function.

6 The petitioner submits that even according to statements made by the Hon'ble Minister of State for Labour, the proposed Scheme is likely to be amended taking into account the various suggestions and objections taken by the office bearers of the Central Trade Unions. Apart from this the Scheme has not been officially announced or a copy thereof has been tabled in the Rajya Sabha or Lok Sabha. The Scheme as it is unofficially formulated and available in the Office of the 2nd Respondent is not thus an authentic document. In any case, the Scheme is not final and it may be amended in view of several demands/suggestions from various quarters.

7 The 1st and 2nd Respondents are appointed pursuant to Section 5-D of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (the Act) and are thus a Statutory authority. The 1st and 2nd Respondents are therefore, expected to function within their jurisdiction and as per the Rules and Regulations made in that behalf. The appointment and powers of the 1st and 2nd Respondents are governed by Chapter III of the Act. The powers to be exercised by the said Respondents are provided in Section 24 of the said Act. Thus, the 1st and 2nd Respondents are empowered to administer the Employees' Provident Fund and the Schemes made as per provisions of the Act. The said

7

Respondents therefore, have no power to do anything about the proposed Scheme as the Scheme has not yet been lawfully brought into effect. The action on the part of the 1st and 2nd Respondent therefore, to issue advertisement as per Exhibit 'C' is beyond their jurisdiction.

8 Apart from this, in the said advertisement the 1st & 2nd Respondents have sought to create a favourable opinion about the Scheme by resorting to Suppressio Veri and Suggestio Falsi. In the said advertisement the pension formula is nowhere stated. The 1st and 2nd Respondents are also silent about reported claim made that the Pension is linked to Consumer Price Index. In fact, no such linkage is there and in case the said Respondents intended to give a true picture to the interested members of the Provident Fund, they ought to have specifically stated that the pension is not linked to Consumer Price Index. Apart from this, there are several other lacunae in the advertisement issued by the said Respondents. The petitioner Union therefore, caused a Legal Notice to be served upon the 1st Respondent through their Advocate. Annexed hereto and marked EXHIBIT 'D' is a copy of Notice dated 4th May 1993 addressed to the 1st Respondent by the petitioner's Advocate. In the said Notice it was clearly stated that the 1st Respondent had no right whatsoever to waste workers Provident Fund monies to issue false, misleading and obviously partisan advertisement. In the said Notice the 1st Respondent was also called upon to indicate the

EXHIBIT 'D'

8

authority under which the draft of the concerned advertisement was finalised and issued. The 1st Respondent was requested to give his reply within two weeks from the date of the Notice. The petitioner submits that the said period has since long been over. However, the 1st Respondent has not sent any reply.

9 Apart from such action on the part of the 1st and 2nd Respondents being without jurisdiction, without authority and an attempt to mislead a large majority of workers who are members of the Provident Fund, the 1st and 2nd Respondents have also committed Breach of Privilege of the Rajya Sabha in as much as the concerned Respondents have sought to advertise a Scheme even before the proposed amendments were approved by the Rajya Sabha leave alone the Scheme being finalised and tabled in the Rajya Sabha. Some Members of Parliament have taken a serious view of the matter and have written to the Hon'ble Minister of State for Labour. Annexed hereto and marked EXHIBITS 'E' & 'F' are copies of such letter no.SM/1631/F-24 dated 11.5.93 written by Shri Samar Mukherjee and letter no.BA/2876/F-24/93 dated 2nd August '93 written by Shri Basudev Acharya.

EXHIBIT 'E'
EXHIBIT 'F'

10 The petitioner submits that 1st and 2nd Respondents are statutory authorities and are required to function within their jurisdiction, lawfully and reasonably. The advertisement issued by the 1st Respondent as per Exhibit 'B' is

in breach of such statutory duties cast upon the 1st Respondent. The advertisement must have obviously cost considerable money which has come from the finances of Central Provident Fund Organisation. The finances of Central Provident Fund Organisation are not to be so frittered away. But for the timely notice sent by the petitioner, the 1st and 2nd Respondents would have gone ahead and issued several such advertisements thereby completely misleading about 1.5 crores workers who are members of the Provident Fund Scheme, 1952, or members of Provident Fund exempted under Section 17 of the Act. At EXHIBIT 'G' is the comparative chart showing how the Respondent No. 1 has deliberately suppressed information in the impugned advertisement and has misled the workers.

EXHIBIT 'G'

- 11 Apart from this the 1st Respondent is also going about addressing public meetings taking part in various Seminars and Workshops reportedly canvassing support for the proposed Pension Scheme. Such action on the part of the 1st Respondent is also in Breach of his statutory duties as he cannot canvass any scheme unless it is lawfully brought into effect. The 1st and 2nd Respondents, if at all, are required to only give clarification in case any such clarification is sought by any member. Instead the 1st Respondent has refused to give any clarification despite the petitioner repeatedly requesting to provide the petitioner with copy of the said

10

Scheme. Such act on the part of the Respondent is in Breach of his statutory duties.

12 Under the circumstances, the petitioners state that they are entitled to a Writ of Prohibition prohibiting the 1st and 2nd Respondents from issuing such advertisements as also prohibiting the 1st Respondent from speaking at any public forum about the proposed Pension Scheme, unless it is duly finalised and brought into effect legally. The petitioner further submits that they are entitled to a Writ of Mandamus or a Writ Order or Direction in the nature of Mandamus to the 3rd Respondent to recover the cost of all advertisements that might have been issued by the 1st Respondent personally.

13 Being aggrieved by the action of the 1st and 2nd Respondents in having issued the public advertisement of the proposed Pension Scheme the petitioner approaches this Hon'ble Court on the following amongst other grounds which are without prejudice to one another.

a) The proposed Pension Scheme has not yet been finalised and brought into effect legally. The Scheme is reportedly formulated pursuant to the proposed amendment to the Employees' Provident Funds & Miscellaneous Provisions Act, 1952. Thus, unless the proposed amendment

is passed by both Houses of Parliament and legally brought into effect the 1st Respondent cannot make any public statement leave alone give an advertisement.

b) The 1st and 2nd Respondents are statutory authorities and are required to function within their jurisdiction lawfully and reasonably. The action on the part of the 1st Respondent in having authorised an advertisement as at Exhibit 'C' is without jurisdiction, unlawful and unreasonable.

c) Being a statutory authority, the 1st and 2nd Respondents are required to act lawfully and reasonably. But instead the said Respondents have tried to mislead and mis-inform large number of workers without giving any relevant details of the proposed Scheme which is not duly finalised or legally brought into effect.

d) The proposed amendment is still pending in the Rajya Sabha and has not been passed. It has not even been tabled in the Lok Sabha. As such, the amendment has not come into effect and the question of any Pension Scheme will arise only after the

proposed amendment is approved by both Houses of Parliament and assent is accorded by the President. Even before that the 1st and 2nd Respondents have rushed to the Press to advertise the Scheme only to solicit support for the Scheme without giving full details about the Scheme.

- e) The expenses involved in issuing such a large advertisement are considerable and have come out of the funds of Central Provident Fund Organisation. No such expenditure is permitted to be incurred by the 1st and 2nd Respondents. Hence such an expenditure is without authority and the 1st respondent is personally liable to bear the cost of the advertisement.
- f) Being statutory authorities, the 1st & 2nd Respondents are not acting fairly and reasonably as they are giving only one sided advertisements thereby denying full and correct information relating to the Scheme.

14 The Petitioners submit that they have no other expeditious and efficacious remedy and that the reliefs prayed for herein if granted would provide complete relief.

- 15 The Petitioners submit that the cause of action has arisen in Bombay and that this Hon'ble Court has jurisdiction to entertain and try this Petition.
- 16 The Petitioners state that there is no delay in filing this Petition.
- 17 The Petitioners state that they have not filed any Petition and/or application in any Court on the subject matter of this Petition.
- 18 The Petitioners shall rely on documents a list whereof is annexed hereto.
- 19 The Petitioners have paid the requisite Court fee.
- 20 The petitioners therefore, pray :
 - a) That this Hon'ble Court be pleased to issue a Writ of Prohibition or a Writ Order or Direction in the nature of prohibition prohibiting the 1st Respondent from issuing any advertisement similar to the one as at Exhibit 'C' and to further prohibit the said Respondent from appearing in any public forum and speaking in

favour of the proposed Pension Scheme until the said Scheme is finalised and legally brought into force.

b) That this Hon'ble Court be pleased to direct the 2nd Respondent to publish at the cost of the 2nd Respondent the alternative viewpoint of the Petitioner in the same newspaper and with the same prominence.

c) Pending hearing and final disposal of this petition to direct the Respondents not to issue any further advertisement similar to that at Exhibit 'C'.

d) Pending hearing and final disposal of this petition to direct the 1st respondent not to speak about the proposed Pension Scheme at any Public forum until the same is legally brought into force.

e) Pending hearing and final disposal of this petition to direct the 2nd Respondent to publish at the cost of

the 2nd Respondent the alternative viewpoint of the Petitioner in the same newspaper and with the same prominence.

- f) For further and such other reliefs as this Hon'ble Court may deem fit and proper.

BOMBAY

Sd/-
PETITIONER

DATED THIS 30TH DAY OF AUGUST 1993.

VERIFICATION

I, B. A. Mendonca, the Organisation Secretary of the Petitioner abovementioned do hereby solemnly declare that whatever has been stated in the paragraphs 1 to of the petition is true to my knowledge and belief and the remaining paragraphs are based on information received which I believe to be true.

Solemnly declared at Bombay
this 30th day of August 1993.

Sd/-
PETITIONER

Before me
Sd/-

Sd/-
COLIN GONSALVES
ADVOCATE FOR PETITIONER.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1689 OF 1993

Philips Employees' Union,
Bombay

).. Petitioner

V/s

1. Shri B.N. Som & Ors.

).. Respondents

To
The Prothonotary & Sr. Master
High Court
Bombay.

I, B. A. Mendonca, the Organisation Secretary of the petitioner abovenamed do hereby appoint Mr. Colin Gonsalves, Advocate to act, appear and plead on my behalf in the above matter.

Dated this 30th day of August 1993.

Accepted :

Sd/-
(B. A. Mendonca)
Petitioner.

Sd/-
Colin Gonsalves
Advocate.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1689 OF 1993

Philips Employees' Union,
Bombay

).. Petitioner

V/s

1. Mr. B. N. Som & Ors.

).. Respondents

MEMORANDUM OF REGISTERED ADDRESS

Philips Employees' Union
C-3, Anagha Co-operative Housing
Society
Sarojini Naidu Road
Mulund (West)
Bombay 400 080.

Sd/-
Advocate for
Petitioner

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1689 OF 1993

Philips Employees' Union,
Bombay

).. Petitioner

V/s

1. Mr. B.N. Som & Ors.

).. Respondents

LIST OF DOCUMENTS

- 1 Exhibits annexed to the Petition
- 2 Correspondence prior to the Petition

Sd/-

Advocate for Petitioner

TO BE INTRODUCED IN THE RAJYA SABHA

29 MAR 1993

Bill No. XXIV of 1993

THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS (AMENDMENT) BILL, 1993

A

BILL

further to amend the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Be it enacted by Parliament in the forty-fourth Year of the Republic of India as follows :-

1. This Act may be called the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Act, 1993. Short title

5
19 of 1952

2. In the long title to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the principal Act), for the words "family pension fund", the words "pension fund" shall be substituted. Amendment of long title

3. In Section 2 of the principal Act -

(a) clauses (gg) and (ggg) shall be omitted. Amendment of Section 2

(b) after clause (k), the following clauses shall be inserted, namely :-

'(kA) "Pension Fund" means the Employees' Pension Fund established under sub-section (2) of section 6A;

(kB) "Pension Scheme" means the Employees' Pension Scheme framed under sub-section (1) of Section 6A;'

(c) after clause (1), the following clause shall be inserted, namely :-

'(11) "superannuation" in relation to an employee, who is the member of the Pension Scheme means the attainment, by the said employee, of the age of fifty-eight years'.

Substitu-
tion of the Pension",
word "Pens-
ion" for the
words "Family
Pension"

4. In the principal Act, for the words, "Family Pension", wherever they occur, the word "pension" shall be substituted.

Substitu-
tion of a
new section
for section
6A and 6B
Employees
Pension
Scheme

5. For sections 6A and 6B of the principal Act, the following section shall be substituted, namely :-

"6A (1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Pension Scheme for the purpose of providing for -

(a) superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies; and

(b) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees.

(2) Notwithstanding anything contained in section 6, there shall be established, as soon as may be after training of the Pension Scheme, a Pension Fund into which there shall be paid from time to time, in respect of every employee who is a member of the Pension Scheme -

(a) such sums from the employer's contribution under section 6, not exceeding eight and one-third percent of the basic wages, dearness allowance and retaining allowance, if any, of the concerned employees, as may be specified in the Pension Scheme.

(b) such sums as are payable by the employers of exempted establishments under sub-section (6) of section 17;

(c) the net assets of the Employees' Family Pension as on the date of establishment of the Pension Fund.

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

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

(5) Subject to the provisions of this Act, the Pension Scheme may provide for all or any of the matters specified in Schedule III.

(6) The Pension Scheme may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that scheme.

(7) A Pension Fund Scheme, framed under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme or both Houses agree that the scheme should not be made, the scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that scheme.

6. In section 6C of the principal Act, -

Amendment of Section 6C

(a) sub-section (3) shall be omitted;

(b) clause (b) of sub-section (4) shall be omitted.

7. In section 17 of the principal Act, -

(a) for sub-section (1C), the following sub-section shall be substituted, namely :-

Amendment of Section 17

"(1C) The Central Government may, by notification in the Official Gazette, and subject to such conditions as may be specified therein, exempt any establishment or class of establishments from the operation of the Pension Scheme if the employees of such establishment or class of establishments are either members of any other income-tax approved pension scheme or proposes to be members of such approved pension scheme, where the pensionary benefits are at par or more favourable than the Pension Scheme under this Act".

(b) in sub-section (6), words "as well as the employee's contribution" shall be omitted.

8. For Schedule III to the principal Act, the following Schedule shall be substituted, namely :-

Substitution of new schedule for Schedule III

SCHEDULE III

[See section 6A (5)]

MATTERS FOR WHICH PROVISION MAY BE MADE IN THE PENSION SCHEME.

1. The employees or class of employees to whom the Pension Scheme shall apply.

: 4 :

2. The time within which the employees who are not members of the Family Pension Scheme under section 6A as it stood before the commencement of the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Act, 1993 (hereinafter, in this Schedule, referred to as the amending Act) shall opt for the Pension Scheme.

3. The portion of employers' contribution to the Provident Fund which shall be credited to the Pension Fund and the manner in which it is credited.

4. The minimum qualifying service for being eligible for pension and the manner in which the employees may be granted the benefits of their past service under section 6A as it stood before the commencement of the amending Act.

5. The regulation of the manner in which, the period of service for which no contribution is received.

6. The manner in which employees' interest will be protected against default in payment of contribution by the employer.

7. The manner in which the accounts of the pension fund shall be kept and investment of moneys belonging to pension fund to be made subject to such pattern of investment as may be determined by the Central Government.

8. The form in which an employee shall furnish particulars about himself and the members of his family whenever required.

9. The forms, registers and records to be maintained in respect of employees, required for the administration of the Pension Scheme.

10. The scale of pension and pensionary benefits and the conditions relating to grant of such benefits to the employees.

11. The manner in which the exempted establishments have to pay contribution towards the Pension Scheme and the submission of returns relating thereto.

12. The mode of disbursement of pension and arrangement to be entered into with such disbursing agencies as may be specified for the purpose.

13. The manner in which the expenses for administering the Pension Scheme will be met from the income of the Pension Fund.

14. Any other matter which is to be provided for in the Pension Scheme or which may be necessary or proper for the purpose of implementation of the Pension Scheme.'

STATEMENT OF OBJECTS AND REASONS

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act 19 of 1952) provides for institution of compulsory Provident Fund, Family Pension Fund and Deposit Linked Insurance Fund for the benefit of the employees in factories and other establishments employing twenty or more persons. The Act presently applied to 174 categories of industries and classes of establishments. As on 31st March, 1992, about 2.12 lakh establishments with about 16.6 million subscribers were covered under the Act.

2. In August, 1990, the Central Board of Trustees of Employees' Provident Fund had set up a Tripartite Committee to draw up a suitable Pension Scheme for the subscribers under the Act. The Committee submitted their Report in December, 1990. The Central Board of Trustees, approved a Pension Scheme, as contained in the above Report, and recommended it to the Central Government for acceptance.

3. The Central Government have accepted the recommendations of the Committee and propose to introduce a comprehensive pension scheme of Social Security. It is proposed to amend the Act for the purpose to empower the Central Government to frame an Employees' Pension Scheme retrospectively or prospectively providing *inter alia*, for the following :-

(i) superannuation pension, retiring pension, permanent total disablement pension, widow or widower's pension, children pension or orphan pension;

(ii) creation of a Pension Fund without any extra contribution from either employers or employees, but by diverting 8.38 per cent of the existing contribution from the employers' share of provident fund to the Pension Fund from the date the Pension Scheme comes into force;

(iii) transfer of all assets and liabilities of the existing Family Pension Fund to the proposed Pension Fund.

4. The Bill seeks to achieve the above objects.

NEW DELHI
The 19th March, 1993

P.A. SANGMA

MEMORANDUM REGARDING DELEGATED LEGISLATION

The new section 6A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 proposed to be inserted *vide* clause 5 of the Bill seeks to empower the Central Government to frame the Employees' Pension Scheme for the purpose of providing superannuation pension, retiring pension, permanent total disablement pension to the employees and also widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees covered under the Act. Under the Employees' Pension Scheme which will be framed by the Central Government, the various matters which are to be provided therein are enumerated in the new Schedule III proposed to be inserted *vide* clause 8 of the Bill.

2. Clause 7 of the Bill seeks to empower the Central Government to exempt any establishment or class of establishments having any other income-tax approved scheme, subject to the conditions as may be specified in the notification.

3. The provisions to be made in the Employees' Pension Scheme under the Act will contain matters of detail and day-to-day working e.g., the employees or class of employees to whom the Scheme shall apply, the portion of employers' contribution to be credited to the pension fund, the scales of superannuation pension, retiring pension, permanent total disablement pension, children pension and orphan pension to be paid to the employees and their beneficiaries and the mode of disbursement thereof and other like matters.

4. The delegation of legislative power is, thus, of a normal character .

ANNEXURE

EXTRACTS FROM THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952.

(19 of 1952)

An Act to provide for the institution of provident funds, family pension fund and deposit-linked insurance fund for employees in factories and other establishments.

* * * * *

2. In this Act, unless the context otherwise requires,-

* * * * *

(gg) "Family Pension Fund" means the Family Pension Fund established under the Family Pension Scheme; Definitions

(ggg) "Family Pension Scheme" means the Employees' Family Pension Scheme framed under section 6A;

* * * * *

6A. (1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Family Pension Scheme for the purpose of providing family pension and life assurance benefits to the employees of any establishment or class of establishments to which this Act applies. Employees Family Pension Scheme

(2) There shall be established, as soon as may be after the framing of the Family Pension Scheme, a Family Pension Fund into which shall be paid from time to time in respect of every such employee -

(a) such portion, not exceeding one-fourth of the amount payable under the section 6 as contribution by the employer as well as the employee, as may be specified in the Family Pension Scheme;

(b) such sums as are payable by the employer of an exempted establishment under sub-section (6) of section 17, and

(c) such sums, being not less than the amount payable in pursuance of clause (a) out of the employer's contribution under section 6, as the Central Government may after due appropriation made by Parliament by law in this behalf, specify.

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

(4) The Family Pension Scheme may provide for all or any of the matters specified in Schedule III.

(5) The Family Pension Scheme may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in that Scheme.

special grant by Central Government

6B. The Central Government shall, after due appropriation made by Parliament in law in this behalf, pay such further sums as may be determined by it into the Family Pension Fund to meet all the expenses in connection with the administration of the Family Pension Scheme other than the expenses towards the cost of any benefits provided by or under the said Scheme.

Employees Deposit linked Insurance Scheme

6C. (1) * * * * *

(3) The Central Government shall, after due appropriation made by Parliament by law, contribute to the Insurance Fund in relation to each employee, of any establishment or class of establishments to which this Act applies, an amount representing one-half of the contribution which an employer is required, by sub-section (2), to make.

(4) (a) * * * * *

(b) The Central Government shall, after due appropriation made by Parliament by law, pay into the Insurance Fund such further sums of money representing one-half of the sums payable by the employer under clause (a) to meet all the expenses in connection with the administration of the Insurance Scheme other than the expenses towards the cost of any benefits provided by or under that scheme.

* * * * *

17. (1) * * * * *

Power of Exempt

(1C) The Central Provident Fund Commissioner may, by notification in the Official Gazette, and subject to such conditions as may be specified therein, exempt, whether prospectively or retrospectively, any employee or class of employees or any establishment from the operation of all or any of the provisions of the Family Pension Scheme, if such employee, class of employees, or the employees of such establishment is or are in enjoyment of benefits in the nature of family pension, and the Central Provident Fund Commissioner is of the opinion that such benefits are on the whole not less favourable to such employees than the benefits provided under this Act or the Family Pension Scheme in relation to employees in any other establishment of a similar character.

* * * * *

(6) Subject to the provisions of sub-section (1C), the employer of an exempted establishment or of an exempted employee of an establishment to which the provisions of the Family Pension Scheme apply, shall, notwithstanding any exemption granted under sub-section (1) or sub-section (2), pay to the Family Pension Fund such portion of the employer's contribution as well as the employee's contribution to its provident fund within such time and in such manner as may be specified in the Family Pension Scheme.

* * * * *

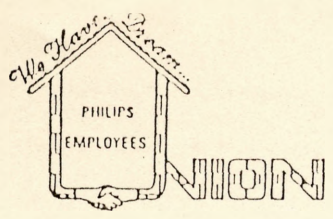


EXHIBIT 'B'

PHILIPS EMPLOYEES' UNION: BOMBAY

Regd Office:
C-3, Anagha Co-op. Housing Society
Srojinai Naidu Road
Mulund (West), Bombay - 400 080

Ref. : FEU:PF:93:123

Date: MARCH 17, 1993

Mr. B.N. Som
Central Provident Fund Commissioner
NEW DELHI.

Dear Sir,

"Where knowledge is free; where the world has not been broken up by narrow domestic walls; where words come out from the depth of truth."

- Rabindranath Tagore -

This refers to the telephonic talk our President, Mr. Kiron Mehta had with your P.A. Mr. Kalyan Krishnan regarding the details of the Pension Scheme about which the Hon'ble Labour Minister talked in the Rajya Sabha. As you were not available in the office, we were compelled to talk to him.

We are shell-shocked to learn from Mr. Kalyan Krishnan that your good office cannot part with any information as the Bill of the scheme is to be tabled in Parliament. He very emphatically stated that the information is 'secret'. We fail to understand or appreciate this Kafkaesque secrecy. If the Employers' Federation of India vide their Circular No. X:1:2:441 dated April 15, 1991, could circulate the copy of the Employees' Pension Scheme, we see no reason why the employees and their Unions for whom this scheme is sought to be introduced, are denied the right to this information.

Please note that this denial is highly unfair, unethical & illegal. We once again request you to provide us with a copy of the proposed Scheme. If we are not given the information before the Bill is tabled in Parliament, we reserve our right to move the Court of Law.

Awaiting your early response, we remain,

Yours truly,
for PHILIPS EMPLOYEES' UNION, BOMBAY

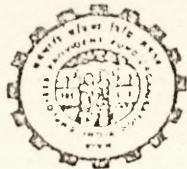
(SUDHIR D. VAIDYA)
GENERAL SECRETARY.

May 2-8, 1993

28

SUNDAY

तार: "केन्द्र निधि" नई दिल्ली
Telegram: "KENDRA NIDHI" New Delhi



टेलिक्स
Telex 031-66109 CPFC IN

दूरभाष
Tel. No. 3312975, 3320600

कर्मचारी भविष्य निधि संगठन
EMPLOYEES' PROVIDENT FUND ORGANISATION
केन्द्रीय कार्यालय
CENTRAL OFFICE

नवीं मंजिल, मयूर भवन, कनाट सर्कस, नई दिल्ली ११०००९
9th Floor, Mayur Bhawan, Connaught Circus, New Delhi 110 001

ATTENTION E.P.F. SUBSCRIBERS

Do you know what the new Pension Scheme offers?

- (1) The new Pension Scheme provide for :-
 - (a) Pension on retirement.
 - (b) Pension in case of death either in service or even after retirement to the survivor widow/widower.
 - (c) Pension on becoming invalid while in service.
 - (d) Pension to children simultaneously with the widow/widower.
 - (e) enhanced pension to children if they are orphans, and,
 - (f) pension to the nominee if the employee dies as a bachelor/spinster or not having any family.
- (2) The scheme also offers optional benefits for return of capital on death or after 15 years of drawal of pension after superannuation.
- (3) The Pension Scheme will be run by diverting employees contribution to the provident fund to the extent of 8.33% of salary upto Rs. 3,500/-
- (4) Where the employer is contributing more than 8.33% the balance employer's contribution will continue to be credited to the Provident Fund.
- (5) Where the employer is contributing to provident fund on a salary in excess of 3,500/- only 8.33% of 3,500/- will be diverted to the pension fund and the balance contribution will continue to be credited to the provident fund.
- (6) The employer's contribution already credited to the provident fund before the date of introduction of the new Pension Scheme will continue to remain to the credit of the subscribers.
- (7) The existing contribution of 1.16% going to the family pension fund from each of the employee's and employer's share will cease to be deducted.
- (8) The minimum of 10 years service for which contributions are received to the Pension Fund has been prescribed for eligibility to member's pension on retirement.
- (9) In the case of existing members the past service under the family pension scheme will also be taken in to account.
- (10) There is no minimum service prescribed for grant of widow/children pension or permanent disability pension.
- (11) The quantum of pension ranges from 31.5% of the average pensionable salary with 20 years service to 58.5% of pensionable salary with 39 years service. The short service pension will be less.
- (12) Pension will be payable on superannuation on attaining the age of 58 years. The scheme also provides for commencement of pension earlier than 58 years of age but not earlier than age 50 at a discounted value.

29

EXHIBIT 'D'

ADVOCATES

By Registered Post A.D.

MIHIR DESAI
GAYATRI SINGH
COLIN GONSALVES

MAY 4, 1993.

Mr. B.N. Som
Central Provident Fund Commissioner,
9th Floor,
Mayur Bhawan,
Connaught Circus,
New Delhi 110 001.

Sub: Issue of Advertisement in the Sunday Mail dated May 2-8, 1993
regarding Employees' Pension Scheme

Sir,

I write this letter under instructions of my clients, PHILIPS EMPLOYEES' UNION, BOMBAY. They along with a large number of Unions functioning in Bombay are appalled by the advertisement you have issued in the Sunday Mail regarding the Employees' Pension Scheme. A copy of the advertisement is attached.

At the outset, it appears that you have no right or power to have issued such an advertisement. As the Commissioner, you are like a trustee of the Employees' Provident Fund and you have to act in good faith on behalf of the members and you certainly cannot act in such a manner as you have done to mislead the members and the workers at large.

Your advertisement has come at a time when the concerned Pension Scheme is pending before the Rajya Sabha and discussions on the Bill are yet to be concluded. The Bill is yet to be introduced in the Lok Sabha. The interference from your side in the manner done constitute a breach of privilege according to my clients and is a gross interference in the functioning of both the Rajya Sabha and the Lok Sabha, in that, by issuing such an advertisement you have sought to mislead not only the concerned workmen but also the Members of Parliament.

My clients say that you have deliberately put in wrong information in the said advertisement and you have also deliberately omitted to convey the necessary and relevant information in a full and fair manner and the entire trend of the advertisement is to paint the Pension Scheme in a rosy light and to mislead the

ADVOCATES

MIHIR DESAI
GAYATRI SINGH
COLIN GONSALVES

people into believing that it is a Scheme beneficial to the working class. Nothing could be further from the truth. And in so doing, you have misused your position as the Central Provident Fund Commissioner.

My clients therefore, seek to know on whose behalf and under whose instructions and orders you published the said advertisement, because, my clients intend to proceed both against you as well as those issuing such instructions in a Court of Law.

Particularly objectionable is the fact that while several persons in authority have stated that the proposed Pension Scheme is likely to be reviewed and revised, you have not waited for such review and have with undue haste published a Scheme that is obsolete even as it stands today.

Your advertisement is false and misleading interalia, in that,

- 1 The Pension formula is nowhere stated;
- 2 It is not stated that the Scheme is not being linked to the Consumer Price Index;
- 3 It is nowhere mentioned that the new Pension Scheme will supersede the Family Pension Scheme;
- 4 The applicability part is totally overlooked;
- 5 It is not mentioned that the quantum of loan for housing and temporary closure will be drastically reduced.
- 6 Paragraph 3 in the advertisement speaks of "employees" contribution, whereas it appears that the Scheme actually indicates the diversion of employers contribution;
- 7 It is also not stated that the Government contribution of 1.1/6% has been stopped.
- 8 It is not stated that the administrative expenses for the Pension Scheme is to come from the income of the new scheme.

The advertisement seeks to create the impression that the proposed Pension Scheme will be of benefit to a large number of workers whereas, in fact it is tantamount to the Government swindling the workers of their legal dues. The overall thrust of the advertisement is to conceal from the workers and from the

Legal notice to PF chief over ad

Staff Reporter

Bombay

THE PHILIPS Employees Union has sent a legal notice to Central Provident Fund commissioner B N Sen for releasing a "false, misleading and obviously partisan" advertisement about the proposed Employees Pension Fund Scheme in the newspapers.

The union's notice has objected to the fact that the advertisement, which appeared in *Sunday Mail* (May 2-8), was released at a stage when the scheme was pending before the Rajya Sabha and discussions on the bill were yet to be concluded. It has pointed out that the bill had not yet been introduced in the Lok Sabha, and hence the release of the advertisement constituted a breach of privilege.

In its notice (represented by advocate Colin Gonsalves), the union has accused Sen of misusing his position and deliberately putting in wrong information while omitting certain relevant information in an attempt to "mislead the people into believing that the scheme is beneficial to the working class (while it is not so)."

It has taken particular exception to the fact that while several persons in authority have stated that the proposed scheme is likely to be reviewed and revised, Sen did not wait for the review and with "undue haste" published the scheme that is "obsolete as it stands now."

The advertisements have been labelled false and misleading on various counts, including the fact that it nowhere stated the pension formula or the fact that it was not linked to the consumer price index. The advertisement also failed to mention that the proposed scheme would supersede the Family Pension Scheme or the fact that the quantum of loan for housing and temporary closure would be drastically reduced. The union further points out that the advertisement did not reveal that the government contribution of 1.16 per cent would be stopped and that the administrative expenses for the scheme would be drawn from the income of the new scheme.

The union maintains that Sen's advertisement had attempted to conceal from the workers and MPs crucial information and relevant formulas, which reveal that an overwhelming majority of workers would be adversely affected as they would contribute far more than they would benefit. The notice further said that the government "stands to gain by having at its disposal a huge and growing corpus of workers' money."

The union has in its notice instructed Sen to reply within a fortnight, failing which they would file legal proceedings against him, both in his professional and personal capacity.

Riu wants

ADVOCATES

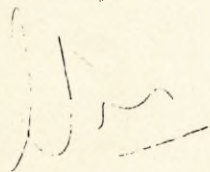
MIHIR DESAI
GAYATRI SINGH
COLIN GONSALVES

Members of Parliament crucial information and in particular the relevant formulas which when used to detailed calculations reveal that the overwhelming majority of the workers inducted into the new scheme will be adversely affected in that, they will contribute far far more than they will benefit in terms of Pension and the Government will stand to gain for having at its beck and call a huge and growing corpus of workers monies.

My clients say that you have no right whatsoever to waste the workers Provident Fund monies to issue such false, misleading and obviously partisan advertisement. You have made the pretense of acting in the interest of the working class but your action is to mislead the public and to try and create a favourable impression particularly now since a large number of trade unions and a considerable number of Members of Parliament have been mobilised against the Pension Scheme. Whether the pension scheme is in the interest of the working class, and whether the Members of Parliament will ultimately pass or reject the said Scheme is outside your purview and jurisdiction, and according to my clients you had no business to interfere in the manner done and it amounts to gross misuse of your Office.

In the circumstances, my clients say that you ought to immediately reply indicating who authorised or ordered you to issue the concerned advertisement and who finalised the draft of the advertisement and should you not reply within two weeks from today to the satisfaction of my clients, they intend to file legal proceedings against you both in your personal and professional capacity. I may further state on behalf of my clients that silence from your side will be interpreted as indicating that you have acted without any authorisation or instructions and that you have personally taken the decision to misuse the workers monies in the manner done.

Sincerely,



Colin Gonsalves
Advocate.

Encl: a/a.

SAMAR MUKHERJEE
MEMBER OF PARLIAMENT
(RAJYA SABHA)



Office:- EXHIBIT 'E'
12, Windsor Place,
New Delhi 110001.

Leader, CPI(M) Group in
Parliament

DO NO. SM/1631/F-24/93

Dated 11-5-1993

Dear Shri Sangma,

I enclose herewith a letter addressed to the Central Provident Fund Commissioner, New Delhi by the advocates on behalf of their clients PHILIPS EMPLOYEES UNION, BOMBAY, drawing attention to an advertisement issued by Central Provident Commissioner in the Sunday Mail May 2-8, 1993.

Such an advertisement by an authority who is like a trustee of the Employees' Provident Fund, is indeed unprecedented. At a time when the Bill concerning New pension scheme is still pending before Rajya Sabha and its provisions are still under intense debate, how can an authority can issue an advertisement virtually campaigning in favour of the Bill. If the Provident Fund authority acts in such an partial manner how can the workers have faith in that institution which is supposed to protect workers' interests being damaged by employer including the Govt.

I want that the matter should be investigated by the Ministry and necessary action taken to ensure that such reckless and irresponsible actions by a responsible authority owing social obligation. Please let me know the steps taken by you in this regard.

With regards,

Yours sincerely,

Encl: As above.

Shri P.A. Sangma,
Minister of State for Labour,
Govt. of India,
New Delhi.

(Samar Mukherjee)

Copy to: Shri B.N. Som, Central Provident Commissioner, 9th floor, Mayur Bhawan, Connaught Circus, New Delhi 110001 for information and reply if any.

2) Philips Employees' Union,
C-3, Anagha, Sarojini Naidu Road
Mулund(West) Bombay 400080

Samar Mukherjee
(Samar Mukherjee)

BASUDEV ACHARYA
MEMBER OF PARLIAMENT
(LOK SABHA)
Deputy Leader



Office:- EXHIBIT 'F'
12, Windsor Place,
New Delhi-110001

BA/2876/F-24/93

2nd August, 1993

Dear Sangma Ji,

Our leader Shri Samar Mukherjee, who has since retired from Rajya Sabha w.e.f. 9.7.93, had written to you vide his letter No.SM/1631/F-24/93 dated 11.5.93, drawing your attention to the unprecedented action of the Central Provident Fund Commissioner, New Delhi in issuing an advertisement in Newspapers (Sunday Mail, May 2-8-9 1993) propagating in favour of the provisions of Govt Bill on New pension scheme even before it could be properly discussed in the Nation's highest policy making forum - the Parliament.

Sh.Mukherjee had urged you to take appropriate action in the matter. However, except for an acknowledgement vide your letter No.02(51)/MOS/L/93 dt. 14.5.93, no action appears to have been taken on this serious matter which undermines the supremacy of Parliament apart from ignoring the on going discussions between the govt and the central trade unions on this vital matter.

I shall be grateful if you could let me know the steps taken in the matter. I am writing this on the advise of our veteran leader Shri Samar Mukherjee, who is the Vice President of CITU .

With regards,

Yours sincerely,
sd
(Basudev Acharya)

Shri P.A.Sangma,
Minister of State for Labour,
Govt.of India,
New Delhi.

cc Com.Sudhir Vaidya, CS Philips Employees' Union
C-3, Anagha Co-op Housing Society, Sarojini Naidu Road,
Bulund (West), Bombay 400000

sd
(Basudev Acharya)

PARTICULARS OF ADVERTISEMENT ISSUED BY THE CPF COMMISSIONER	FACTUAL POSITION
"Do you know what the new Pension Scheme offers?"	Minister of State for Labour states that the Scheme is yet to be formulated. The enabling Bill has not yet been passed in the Rajya Sabha and has not yet been introduced in the Lok Sabha.
(1) The new Pension Scheme provides for:	According to the Booklet "Employees' Pension Scheme" published by the Central Office - Employees' Provident Fund Organisation In case of death after retirement, widow's pension will be half of employee's pension.
"(b) Pension in case of death either in service or even after retirement to the survivor widow/widower"	Upto two children will be paid 1/4 of the widow's pension each. The pension will not be full, even if widow's pension is taken into account.
"(d) Pension to children simultaneously with widow/widower"	Reduced pension STARTS from Superannuation but the LUMPSUM is paid after 15 years. The accumulated 'reduction' at a reasonable rate of interest itself will exceed the LUMPSUM payment after 15 years. Thus, the LUMPSUM payment is not in any way Return of Employers contribution towards the Pension Scheme.
"(2)The scheme also offers optional benefits for return of capital on death or after 15 years of drawal of pension after superannuation"	

PARTICULARS OF ADVERTISEMENT ISSUED BY THE CPF COMMISSIONER	FACTUAL POSITION
<p>"(3)The Pension Scheme will be run by diverting <u>employees</u> contribution to the provident fund to the extent of 8.33% of salary upto Rs.3,500/-"</p>	<p>Actually the proposal is to divert 8.33% of <u>Employers</u> contribution.</p>
<p>"(7)The existing contribution of <u>1.16%</u> going to the family pension fund from each of the employee's and employer's share will cease to be deducted."</p>	<p>The existing FPF contribution is <u>1.17%</u> each from the employer and the employee. Now 8.33% of employer's contribution to PF which would normally have gone to the employee on retirement is diverted to the pension scheme. As Family Pension Scheme will be discontinued and superseded by the new scheme, LUMPSUM benefits such as Retirement-cum-Withdrawal benefit will not be paid henceforth.</p>
<p>"(8)The minimum of 10 years service for which contributions are received to the Pension Fund has been prescribed for eligibility to member's pension on retirement."</p>	<p>In case of service less than 10 years only, the contribution diverted to the pension scheme will be returned. BUT THE INTEREST, NOW PAYABLE AT 12% WOULD BE REDUCED TO 10%. AND NO PENSION WOULD BE PAYABLE.</p>
<p>"(9)In the case of existing members the past service under the family pension scheme will also be taken in to account."</p>	<p>"Past service under Family Pension Scheme", will be taken into account only to decide eligibility i.e. whether minimum 10 years service has been completed. It will not be taken into account as pensionable service which is a major factor in computation of pension. Only 'contributory service' under the new Scheme is taken into account in 'pensionable service'.</p>

! PARTICULARS OF ADVERTISEMENT ! ISSUED BY THE CPF COMMISSIONER !	! FACTUAL POSITION !
! "(11)The quantum of pension ranges from ! 31.5% of the average pensionable salary ! with 20 years service to 58.5% of ! pensionable salary with 39 years ! service. The short service pension will ! be less."	! It should be noted that this pension of 31.5% to ! 58.5% is of pensionable salary which is subjected ! to a ceiling of Rs. 3,500/-. In other words, this ! percentage will have no relation to the actual ! last drawn salary. !

SUPPRESSION

1. After the introduction of the Scheme the principal amount of the accumulated employer's contribution SHALL NEVER BE RETURNED to the employee or his/her family. The interest presently paid on this contribution @ 12% will be discontinued.
2. The Government will stop paying its contribution of 1.17% of employees' salary. The Government will also stop paying the Administrative expenses towards the new Scheme. Under the FPF Scheme, it was paying both.
3. Similarly, the Government will stop paying its contribution and Administrative charges for the Employees' Deposit Linked Insurance Scheme.
4. The existing assets of FPF of over Rs. 5,000/- crores will be transferred to the new scheme.
5. The pension is not linked to the Consumer Price Index.
6. The Loans for housing and temporary closures from employers contribution will be discontinued.
7. The Scheme discriminates against a DAUGHTER. For instance, a son of the deceased employee will continue to receive pension even after his marriage. But a daughter will cease to be eligible for pension after her marriage.
8. There is no mention in the advertisement as to the other conditions applicable for payment of pension to children of deceased employees. These other conditions are :
 - (a) that pension is payable only upto the age of 25;
 - (b) that the children should not be gainfully employed.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1689 OF 1993

Philips Employees' Union,
Bombay

).. Petitioner

V/s

1. Mr. B.N. Som & Ors.

).. Respondent

AFFIDAVIT

I, B. A. Mendonca, Organisation Secretary of Philips Employees' Union, Bombay, the Petitioner abovenamed, aged 36 years residing at Kanta, Mulund West, Bombay 400 080, do hereby swear as under :

1 I say that the facts and legal submissions are set out in detail in the petition and for the sake of brevity I adopt them and I pray that the contents of this Affidavit be treated as if the contents of the petition are reproduced herein in extenso.

2 I pray that the reliefs be granted as grave and irreparable harm would be caused to the petitioners. On the other hand, since the Respondents are the

wrongdoers no harm shall be caused to them if the reliefs are granted.

Solemnly affirmed at Bombay) aforesaid this 30th day of) August 1993.)

Before me

Sd/- Advocate for Petitioner

Sd/- Associate/Asstt. Registrar Bombay High Court.

IN THE HIGH COURT OF JUDICATURE
AT BOMBAY

O. O. C. J.

WRIT PETITION NO. 1689 OF 1993

Philips Employees'
Union, Bombay).. Petitioner

V/s

1. Mr. B.N. Som & Ors.).. Respondent

P E T I T I O N

Dated 30.8.1993

MR. COLIN GONSALVES
Advocate for the Petitioners
Engineers' House
86, Apollo Street
Fort
Bombay 400 023.

Tele: 2616951-2

C P Thomas

TRANSPORT & DOCK WORKERS' UNION, BOMBAY

P.D'Mello Bhavan,
P.D'Mello Road,
Carnac Bunder,
Bombay - 400 038.

/FOR FAVOUR OF PUBLICATION/

1st September, 1993

SUPREME COURT DISMISSES BOMBAY
PORT TRUST'S APPEAL IN THE MATTER
OF PAYMENT OF INTERIM RELIEF TO
THE EMPLOYEES OF COOPERATIVE CANTEENS.

The Supreme Court vide its Order dated 16th August, 1993, dismissed the Special Leave Petition filed by the Bombay Port Trust against the Order of the Bombay High Court granting payment of Interim Relief to the employees of Co-operative Canteens in the Bombay Port.

Announcing this in Bombay, to-day, the President of All India Port & Dock Workers' Federation, Shri S.R. Kulkarni, said that eventhough the nature of work done by the employees of Co-operative Canteens is identical with the work performed by the direct employees of the Bombay Port Trust in their departmental canteens the Co-operative Canteen employees were paid half of the wages payable to Direct Canteen employees of B.P.T. The Transport & Dock Workers' Union, Bombay, had filed a Writ Petition in the Bombay High Court praying that on the basis of the principle of equal pay for equal work, the employees of Co-operative Canteens should be paid the same wages and benefits as were admissible to their counter-parts in the departmental canteens of the B.P.T.

After hearing the parties the Division Bench of the Bombay High Court had ordered grant of Interim Relief to the employees of the Co-operative Canteens. The Order inter-alia stated "If the court is prima facie satisfied that the petitioners have made out a strong case for grant of interim relief, the court will not refuse the same." The Division Bench of the Bombay High Court, therefore, directed the Bombay Port Trust and the Managing Committees of the Co-operative Canteens to pay 50% of the difference in the wages of the employees of the departmental canteens and employees of the canteens managed by the Cooperative Society. The High Court also directed that the Respondents should pay the amount of Interim Relief to the Petitioner i.e. the Transport & Dock Workers' Union, who will disburse the same to the employees of Co-operative Canteens.

Transport & Dock Workers' Union, Bombay.

-2-

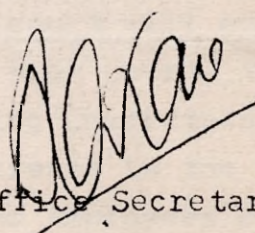
Against this Order the Bombay Port Trust filed a Special Leave Petition in the Supreme Court of India and obtained an ex-parte stay Order dated 26th April, 1993. The Union moved an urgent application for getting the stay Order vacated.

The Union's application came up for hearing on 16th August, 1993, before the Hon'ble Mr. Justice S. Ratneval Pandian and Hon'ble Mr. Justice R.M. Sahai. After hearing the parties the Supreme Court was pleased to dismiss the Special Leave Petition filed by the B.P.T. and passed the following Order:-

" SINCE THIS SLP IS PREFERRED ONLY AGAINST THE INTERLOCUTORY ORDER, WE ARE NOT INCLINED TO INTERFERE. HENCE THE S.L.P. IS DISMISSED. THE ORDER OF THE HIGH COURT IS RESTORED. WE REQUEST THE HIGH COURT TO DISPOSE OF THE MAIN WRIT PETITION WITHIN A PERIOD OF THREE MONTHS FROM THE DATE OF RECEIPT OF THIS ORDER. THE WORKERS WILL BE ENTITLED TO THE ARREARS."

Shri S.R. Kulkarni, who is also one of the senior Trustees of the Bombay Port Trust has requested Shri Dinesh K. Afzulpurkar, Chairman of the Bombay Port Trust to implement the Supreme Court's Order without any delay and pay the canteen workers their due arrears with effect from March, 1993.

Shri K.K. Singhvi, Sr. Adv. assisted by Shri Sanjay Singhvi, Shri B.N. Singhvi, Shri Brij Bhushan, Advs. and Shri D.L. Maskikar - Asst. Secretary of the Union, appeared for the Transport & Dock Workers' Union, and Mr. R.K. Jain, Sr. Adv. and Mr. with Mr. T. Sridharan and Mr. Rajinder Singhvi, Advocates, appeared for the Bombay Port Trust.


Office Secretary.