# THE CRUEL FACES OF THE EMPLOYEES' PENSION SCHEME 1995 – NISHITH CHOWDHURY



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**Pension as a third retirement benefit in addition to the contributory Provident Fund and Gratuity was a long standing demand of the Industrial workers.** The Government introduced a scheme by name Employees Pension Scheme (EPS 1995) w.e.f. 15th November 1995 replacing the existing Family Pension Scheme 1971 for the industrial workers through diverting a portion of the employer's contribution to the Provident Fund thereby reducing the PF benefit of the employee to make provision for an insignificant amount towards retirement pension. There exist two types of Provident Fund and Pension schemes now in the country amongst whom there cannot be any comparison.

1) General Provident Fund for Central & State Government employees – Here the Government is not required to deposit any amount in the PF account. In exchange, the Government employees are in receipt of superannuation pension which is equivalent to 50% of the last drawn basic wage plus DA at the prevalent rate as applicable to the serving employees. There is provision of pension to the nominee in case of premature death of the employee or the pension holder. Off late the Government has brought about quite a number of changes in the scheme for the new entrants which the trade union movement is opposing tooth and nail.

2) Contributory Provident Fund governed by the PF Act 1952 for Industrial workers both in the Public and Private Sector – As per this Act deduction @ 12% (w.e.f. 22/07/1997, earlier it was 8.33%) of the total wage of an employee is compulsorily made and an equivalent amount is required to be deposited by the employer in the Fund managed by Employees' Provident Fund Organization. Though there was a provision as per para 6(a) of the Act to formulate a pension scheme in due course, an optional Family Pension Scheme (FPS 1971) was only started during 1971 to arrange payment of some amount of pension to the nominee wife/husband of any employee dying in harness. Here an amount equivalent to 1.67 % of wages of an employee and a matching grant out of the Provident Fund contributions got diverted to the Pension Fund with a Government contribution of 1.16 % of the wage. There was provision of some withdrawal benefit after superannuation too. This scheme was withdrawn w.e.f. 15.11.1995 with the introduction of Employees Pension Scheme 1995 (EPS 1995) which was made compulsory for the FPS 1971 members. In the new scheme, 8.33% out of the employer's contribution towards Provident Fund is required to be diverted to the Pension Fund with the remaining 3.67 % deposited in the PF account. The Government's contribution to the Pension Fund continued to remain static at 1.16 % of the wage. Thus PF benefit was reduced substantially and at the cost of PF benefits provision for superannuation or widow and children pension was made. There was widespread resentment amongst the workers against the scheme though the trade union movement in the country was not united to fight the case.

A few independent unions who organized movement through out the country, several court cases were filed by various unions in different parts of the country all of which were brought to the Supreme Court for hearing. The hearings were completed by May 2001 but the judgment surprisingly remained undelivered for long 30 months. As per the proceedings of the case, examinations/cross examinations, records submitted by the Petitioners, the EPS 1995 was supposed to be scrapped or at least made optional. But it was not the desire of the Government and hence not of the Apex Court and the ruling were naturally in favour of Government.

EPS 1995 – where it stands after 14 years :-

• Though as per the scheme 8.33% of wage out of employers' contribution towards Provident fund is to be diverted to the Pension Fund but factually there is an upper cap of monthly wage which stands at Rs.6500/- as of now. At this rate of contribution to Pension Fund what maximum pension a pensioner can get or what exactly is the amount of pension now being received by the retirees can be revealed from the examples given hereafter.

Example 1 – For getting the maximum pension one has to be a member of the scheme for 35 years. Effective from 15.11.1995 if a person remains in employment for 35 years as per the pension formula, , he will be entitled for maximum pension from December 2030 which would be = Rs.3250/- only. One can easily imagine what shall be the value of this small amount during 2030 and how a pensioner would be able to maintain his family then with this paltry amount.

Example 2 – With the advent of LPG regime, several thousand employees have lost their livelihood both in the private and in the public sector and the pension relief granted to them ranges between Rs. 265 & Rs.1200 only. Example 3 – And those who have just superannuated after 30/35 years of service say during 2005, the maximum pension they are getting is hardly Rs.2000/- a month.

This is what the real face of the much publicized social security for the industrial workers.

• Diversion of Rs.6500/- annually or say an amount of Rs 550/- per month from the employers' contribution towards provident fund in the pension scheme for long 35 years, if deposited in a prevailing recurring deposit scheme, shall earn an amount of no less than 2.5 to 3 times the deposited amount. If that much of amount is then invested in a monthly income scheme the amount receivable would be much more than the maximum pension amount of Rs.3250/- per month with the entire deposited amount remaining intact. Government will however give an explanation that pension for premature death or permanent incapacitance of a member is also to be taken in mind. But statistics will confirm such cases are minimal in number and are not that significant.

• Unabated price rise have already made the lives of general public miserable. The industrial workers after superannuation are quite unable to maintain the same standard of leaving. How much this paltry pension helps a retired industrial worker? Usually the money received through PF or Gratuity by a retired worker is dried up to meet the expenses towards education and marriage of children or for constructing a small house. The money with which he has now to pull on is the pension, the amount of which is so meager that a family cannot survive with it. It may however help the retired industrial worker to be entitled for a BPL card for his family.

• While giving ruling in favour of EPS 1995, the Hon'ble Supreme Court relied on several aspects including the provisions of 1/3rd commutation of pension, facility for return of capital, reduced pension at even the age 50 years, provisions for valuation of pension fund every year for enhancement of pension rate etc. The said ruling as we know was given on 11th November 2003 and within 5 years of this judgment,

(a) the 1/3rd commutation benefit of pension as per Para 12(a) of the scheme by which the pensioner was to get 100 times the original pension is no longer in existence.

(b) Benefit of 100 times the original pension as Return of capital on death of the pensioner to the widow by surrendering 10% of the original pension as per Para 13(1), 13(2) & 13(3) of the scheme also stands withdrawn. (c) Vide Para 12(7) of the scheme, facility of reduced pension to a worker loosing service before superannuation was there for which reduction of original pension would have been @ 3% for each year.

This has now been modified and has been made 4%. [(a) & (b) Deleted and (c) modified vide GSR 688(E) dated 26.09.2008 w.e.f 26.09.2008]. (d) Vide para 32 of the pension scheme, there shall be annual valuation of the fund to facilitate upward revision of pension. Though it is supposed to be carried out every year, it is revealed from Government data that during last 14/15 years there have been 8 valuations only and the rates at which pension has been enhanced in the first four valuations are as follows: 1) 16/11/1996 – 4 %, 2) 31/03/1998 – 5.5 %, 3) 31/03/1999 – 4 %, 4) 31/03/2000 – 4 %. As per Government there was no allocable surplus during the next four valuations and hence no enhancement. Three more valuations on 31/03/2005, 31/03/2006 and 31/03/2007 have been directed, the reports of which are yet to come. (Source – A letter dated 1st Januray 2009 by the EPFO, Delhi to one pensioner Sri Umapati Tripathy of Uttar Pradesh). Though pension was supposed to be raised at above rates, there are complaints that the same has not been given any effect to. Factually the poor pensioners are not posted with the informations and naturally there is as such no correspondence with the PF offices by them.

It can be stated beyond doubt that the Union Government is instrumental in reducing the benefits of the scheme than to make it more attractive.

Requisites to improvise the Scheme:

Now as the scheme has compulsorily been implemented, one cannot ignore the necessity of effecting improvement in the scheme. The deficiencies noted below will speak of what improvements are essential.

• The amount of pension is meager. • The maximum amount remittable in the pension fund is Rs.6500/- per annum. •

The Government contribution in the fund is very meager. • There is no component of linkage with Dearness Allowance. • Valuation of pension funds is irregular. • Commutation Benefit is withdrawn. • Benefit of Return of Capital is withdrawn. • Percentage reduction enhanced for reduced pension. • There cannot be any comparison of this scheme with the Pension Scheme for the Government employees.

Few relevant statistics:

• Prior to introduction of EPS 1995, as on 31.03.1995, number of Provident Fund members in the country was 1,87,24,000 out of which member of the then Family Pension Scheme was 1,63,81,000 which means the FPS 1971 being optional around 23,43,000 members did not opt for it. The corpus in the FP Fund at that time was Rs.8419.54 crore and after keeping an amount of Rs.1605 crore for maintaining the future payment to the then 1,70,000 family pensioners, net surplus in the fund was Rs.6814.54 crore which ultimately became the initial corpus for EPS 1995.

• As on 31.03.2007 that is 12 years after the introduction of EPS 1995, the number of PF members is 4,44,04,000, Number of EPS members was 3,57,30,000, total accumulation of fund was Rs. 80,766.22 crore and number of pensioners as on 31.03.2006 was 23,35,883 only.