

2. Abatement is set aside and applications for substitution are allowed. Application(s) for intervention is allowed.

3. By this common judgment a batch of civil appeals arising out of the common order passed by the High Court of Judicature at Allahabad in different writ applications and special appeals is disposed of.

4. Civil Appeal No. 894 of 2020 preferred by UP Roadways Retired Officials and Officers Association is taken as the lead case.

CIVIL APPEAL NO. 894 OF 2020

5. In this civil appeal challenge is to the common order dated 24.11.2016 passed by the High Court in Special Appeal No. 685 of 2014 and other connected matters which in turn arose out of common order passed by the learned Single Judge of the High Court on 07.07.2014 in Writ Application No. 63469 of 2012 (Suresh Chandra vs. State of U.P. through Secretary & Ors.) and 51 connected writ applications. The learned Single Judge as well as the Division Bench, under the impugned judgment have dismissed the special appeals and writ applications holding that

the appellants/petitioners do not hold the pensionable post and, thus, are not entitled for receiving pension.

6. The issue falling for consideration is whether the appellants who are the former employees of Uttar Pradesh Roadways, a temporary department of the State Government, are holding any pensionable post before or after their absorption in the U.P. State Roadways Transport Corporation¹.

Government orders regarding service under U.P. Roadways and thereafter U.P. State Roadways Transport Corporation

7. In 1947, Uttar Pradesh Roadways² was created as a temporary department of the State Government for providing public transport facilities. Since the department itself was temporary, the employees working therein were also appointed temporarily and were not members of regular service.

7.1 On 16.09.1960, a Government Order³ was issued providing service conditions of the Roadways employees which

¹ 'Corporation'

² 'the Roadways'

³ 'GO'

were different than the service conditions of employees working in different Government departments.

7.2. On 28.10.1960, another GO was issued providing for pension to the permanent employees of the erstwhile Roadways. It was mentioned in this order that remaining non-gazetted employees of the Roadways (who are not permanent) would be entitled for benefits under the Employees Provident Fund Scheme.

7.3. On 01.06.1972, the Corporation was created under Section 3 of the Road Transport Corporation Act, 1950.⁴

7.4. On 05.07.1972, a GO was issued treating all the employees of the Roadways on deputation with the Corporation without specifying the period of deputation and also assuring them that their service conditions in the Corporation will not be inferior as compared to their service conditions prior to their absorption in the Corporation.

7.5. On 20.04.1997, Article 350 of U.P. Civil Service Regulations⁵ was amended with retrospective effect. However, no amendment was made in Note 3 of Article 350 which provides that non-gazetted post in Government Technical Industrial Institution is not qualified for pension.

⁴ 'Act, 1950'

⁵ 'Regulations'

7.6. On 19.06.1981, the Corporation framed service regulations in exercise of power under Section 45 (2) (c) of the Act, 1950.

7.7. On 28.04.1982, the Roadways (Abolition of Post and Absorption of Employees) Rules, 1982 were framed providing for absorption of all employees of the Roadways in the service of the Corporation w.e.f. 28.07.1982.

Appellants' Case

8. There are three sets of appellants segregated on the basis of the date of appointment:

(1) Those who were appointed in the Roadways prior to the G.O. dated 16.09.1960 and have retired.

(2) Those who were appointed after 16.09.1960 but prior to creation of the Corporation as on 01.06.1972 and have retired.

(3) Those who were appointed after 01.06.1972 when the Corporation was created and have retired.

9. Admittedly, the appellants employees have already received their entire post-retiral benefits immediately after their retirement decades ago without any protest or claim that they hold a pensionable post. The appellants started claiming

pension after the Division Bench judgment of the High Court in ***U.P.S.R.T.C. vs. Mirza Athar Beg***⁶ upholding the judgment of the learned Single Judge dated 25.08.2010 passed in W.P. No. 7728 (S/S) of 1996. The appellants' claim is also based on other two judgments of the Allahabad High Court in the matter of ***The Managing Director, U.P.S.R.T.C vs. S.M. Fazil & 03 others***⁷ (W.P. No. 5440 of 2000 (S/B) and in the matter of ***U.P.S.R.T.C & Ors. Vs. Shri Narain Pandey***⁸ in Special Appeal No. 40 of 2007. A Special Leave Petition (SLP (c) No. 7709/2011) against the judgment in the matter of Mirza Athar Beg was dismissed by a non-speaking order dated 10.07.2013.

10. The appellants submitted representation basing their claim in the line of ***Mirza Athar Beg*** (supra). However, the representation was rejected subsequent to which the subject writ petition was filed.

Appellants' submissions

11. Learned senior counsel appearing for the appellants would submit that the appellants are entitled for pension in

⁶ 2011 (2) ALJ 327

⁷ W.P. No. 5440 of 2000 (S/B)

⁸ 2009:AHC-LKO:3978-DB

terms of the Government Order dated 16.09.1960 as they were appointed prior to establishment of the Corporation in the year 1972. According to them, once the appellants have been made permanent in the Corporation vide Government Orders dated 16.09.1960 and 28.10.1960 they should be treated to be holding a pensionable post. It was also their case that Article 350 of U.P. Civil Service Regulations was amended by a Notification dated 20.04.1977 whereby the word 'Post' was replaced by the word 'Establishment' and as such employees of all establishments under the State Government are deemed to be working on a pensionable post unless the establishment is excluded. Therefore, on a conjoint reading of Government Order dated 28.10.1960 with the amendment made in the year 1977 in Article 350, the appellants are entitled to pension.

12. The appellants also relied on the judgment in the matter of **Mirza Athar Beg** (supra), **S.M. Fazil** (supra) & **Narain Pandey** (supra). The main focus of the appellants' claim is on the amendment to the Article 350 of the Regulations, after which, according to the appellants, Government has not issued any order excluding the establishment in which the appellants were employed and

holding a pensionable post. It is also argued that after the establishment of the Corporation under Section 3 of the Act, 1950, no rule or regulation has been framed in exercise of power under Section 44 denying pension to the appellants. Therefore, the general provisions under Article 350 of the Regulations would be applicable and the appellants are entitled for pension.

13. Apropos the objection that the writ petition was filed belatedly, after decades from the date of retirement, it is submitted that the appellants have recurring cause of action and delay in filing the writ petition is not fatal.

14. *Per contra*, Ms Garima Prasad, learned senior counsel appearing for the Corporation vehemently argued that all the appellants have already opted for and availed the post-retiral benefits under the Employees Provident Fund Scheme, therefore, their present claim preferred after huge delay ranging between 8 to 32 years has rightly been dismissed by the High Court. Reference is made to ***Union of India & Ors. Vs. M.K. Sarkar***⁹

⁹ (2010) 2 SCC 59

15. Ms. Prasad would distinguish the fact situation in the matters of **Mirza Athar Beg** (supra), **S.M. Fazil** (supra) & **Narain Pandey** (supra) by pointing out that in these cases the High Court has not considered the effect of Note 3 of Article 350 of the Regulations which has neither been amended nor deleted even by the amendment dated 20.04.1977. It is further submitted that the Roadways was an establishment having workshops both major and smaller, thus, included in the category of technical institution as has been held by the Allahabad High Court in the judgment rendered in **Bachai Lal v. U. P. S. R. T. C., Allahabad and others.**¹⁰ The Roadways is also an industry according to the test prescribed in the matter of **General Manager, Telecom vs. A. Srinivasa Rao & Ors.**¹¹. Therefore, the non-gazetted post in the Roadways did not qualify for pension in view of Note 3 of Article 350 of the Regulations. It is then argued that the service conditions of employees of the Roadways as existing prior to their absorption in the Corporation were never protected by GO dated 05.07.1972 under which the appellants are not entitled for pension as they have never worked on any pensionable post as indicated in para 1 of GO dated 28.10.1960 till their absorption

¹⁰ (1991) 2 UPLBEC1095

¹¹ (1997) 8 SCC 767

in the Corporation w.e.f 28.04.1982. Further distinguishing the above three cases on which the appellants have placed reliance, it is argued that the appellants in the three above cited cases were working on pensionable post even as per GO dated 28.10.1960 whereas none of the appellants in the present batch of appeals have worked on any pensionable post as per the said GO, therefore, the appellants derive no benefit out of the above three cited cases.

16. In respect of the employees appointed after creation of the Corporation w.e.f. 01.06.1972 it is argued that such appellants are not entitled to the benefit of pension on the basis of GO dated 05.07.1972 or the provisions of the Regulations relating to employees of the erstwhile Roadways sent on deputation to the Corporation and thereafter absorbed therein.

17. In respect of the appellants who were appointed subsequent to 01.06.1972 i.e. after creation of the Corporation, the State Government subsequently issued GO dated 20.10.2004 according approval for payment of pension to those employees who had been appointed on pensionable post in the

Corporation till 18.06.1981. Therefore, such appellants who were never appointed/worked on pensionable post as per GO dated 28.10.1960 till 18.06.1981, are not entitled to pension.

18. Learned Single Judge of the High Court dismissed the writ petition on the ground of delay and laches; waiver and acquiescence but at the same time proceeded to decide the petitions on merits and after threadbare discussion of the applicable GOs and Regulations rejected the claim on merits. Learned Single Judge distinguished the case of the present batch of the appellants from that of the **Mirza Athar Beg** (supra), **S.M. Fazil** (supra) & **Narain Pandey** (supra).

19. On appeal before the Division Bench, the claim of the appellants was once again dismissed and the order passed by the learned Single Judge has been upheld on all material issues including the appellants' claim on the basis of parity vis-à-vis the earlier cases in the matter of **Mirza Athar Beg** (supra), **S.M. Fazil** (supra) & **Narain Pandey** (supra)

ANALYSIS

20. The Roadways was created as a temporary department in 1947. A Government Order was issued on 16.09.1960 providing service conditions of the Roadways employees. The said GO is reproduced hereunder for ready reference:

“G.O. No. 3014 D/XXX- 135/59 dated Sept. 16, 1960

Subject: Terms and conditions of service of temporary employees in the U.P. Roadways - Revisions of.

I am directed to say that the question of revising the terms and conditions of service of the Roadways employee, which is a nationalized commercial undertaking and has to work in conditions different from those prevailing in regular government offices, has been under the consideration of Government for some time past.

The passenger and goods services have to run irrespective of the fact whether it is a Sunday or a festival. The schedule of passenger services run by the State Undertaking cannot be altered off an on. In order to keep the Roadways services going the maintenance and repairs of vehicles has to be attend to even at odd hours at the workshops. At present the conditions of service of the employees of the U.P. Government Roadways and the Central Workshop, Kanpur are governed by the various rules and standing orders of Government applicable to other temporary government servants under the rule making powers of the Governor. In view of the special service conditions of employees of the Roadways it seems necessary to evolve a new set of service conditions for its employees which may be compatible with the nature of work and functions of the organization. Accordingly, in super session of all previous orders on the subject, the Governor has been pleased to pass the following orders prescribed revised terms and conditions of service of temporary employees of the U.P. Roadways including those detailed in para 2 below. The revised terms and conditions of service shall be applicable to all future entrants in the Roadways organization and shall be enforced in the manner mentioned hereinafter in the case of temporary employee including those on the work charge strength and paid on monthly basis.

(1) All temporary employees except those referred to in para 2 shall get one day's rest in every period of seven days in accordance with the rules to be framed by Government. In case the employees is deprived of any of the days or rest, he shall be allowed within the same or following month compensation holidays of equal number of the days of rest so lost.

(2) They shall be entitled to get one days paid holidays for every 20 days of work performed by them during the previous calender year, subject to the condition that the employee has worked for a period of 240 days or more during the previous calender year. In case the employees is not able to avail of full or part of the leave admissible to him during the calender year, it will be carried over to the following year, subject to a maximum of 30 days.

(3) They shall got five days festival holidays in a calender year as prescribed by Government and subject to the rules to be framed for the purpose.

(4) They shall be paid extra wages at the rate of twice of ordinary rate of wages in respect of work performed by them beyond the prescribed hours of work.

(5) Their services are liable to termination on one month's notice on either side, or one month's pay in lieu thereof.

(6) In other respect the conditions of service will remain the same as at present.

The revised terms and conditions of services mentioned in para 1 above shall not apply to the following category of employees:-

(a) All employees working in the offices establishment of the Asstt. General Manager, General Manager, Service Manager, Chief Mechanical Engineer, Roadways Central Workshop, Kanpur and the Head Quarter Office of the Transport Commissioner.

(b) Supervisory staff of the rank of Junior Station Incharge and above on the traffic side;

(c) Technical staff of the rank of Junior Foreman and above on the engineer side;

The above three categories of Roadways staff will continue to be treated as regular government servants and

will be entitled to the benefits admissible to any other government servant of the same category.

3. The Roadways and Central Workshop employees to whom the revised service rules are being made applicable shall be entitled to the provident fund benefits according to the provisions of the Employees Provident Fund Act. For this necessary orders have already been issued separately in G.O. No. 1488-D/XXX 2198/59 dated July, 29, 1960. Immediate step may please be taken for the implementation of the orders issued in the above G.O. The employees governed by the new terms and conditions of service will continue to get facilities for medical treatment so far enjoyed by them. All future entrants shall also be entitled to facilities for medical treatment admissible to Government servants. The canteen and rest house facilities as may be prescribed by government shall also be made available to them in course of time.

4. These order shall come into force w.e.f. October 1, 1960 and shall apply to all future entrants in the service of the Roadways organization and also the existing temporary employees who accept to continue to work on the revised terms and conditions of service. The status of Roadways employees already made permanent remains unaffected. All the existing temporary employees except those mentioned in para 2 above may be asked to indicate in writing if the new service conditions mentioned above are acceptable to them. Those who accept the new terms and conditions of service will be required to fill in a separate acceptance for which will be kept with their service records. If, however, any of the employees do not accept the new terms their services are to be terminated in accordance with the terms of their employment. I am to suggest that the implications of the revised orders may be explained to all concerned by the General Managers and Asstt. General Mangers and Chief Mechanical Engineer and that necessary action may please be intimated forthwith in order to implement the above orders." (Emphasis supplied) "

21. Thereafter another GO was issued on 28.10.1960 providing for pension to the permanent employees of the Roadways. This GO was issued under Note 3 of Article 350 of

the Regulations. We shall first reproduce Article 350 of the Regulations and thereafter GO dated 28.10.1960:

"350. All establishments whether temporary or permanent, shall be deemed to be pensionable establishments;

Provided that it is open to the State Government to rule that the service in any establishment does not qualify for pension.

1. Service in Dak Bungalow and District Garden Establishments does not qualify.

2. The service of a Patwari, whether appointed before or after the abolition of the Patwari or Village Officers' Cases and Funds, does not qualify in any case in which it did not qualify prior to that abolition.

3. Service in non-gazetted posts in Government Technical and Industrial institutions in the Uttar Pradesh does not qualify in the case of persons appointed to such posts on or after November 15,1938."

Exceptions-- This rule does not apply to the posts declared pensionable in Shram (Kha) Vibhag G.O.No.810 (E) XXXVI-B-- 106/56, dated May 29, 1963 and Udyog (Gha) Vibhag G.O.No.375-ED/XVII-D-AQ-19-ED,60, dated JUNE 5, 1963."

"GO No. 3567-P/XXX-2198/99 dated 28.10.1960 - In continuation of G.O. No. 30140/XXX-135-V/1959 dated 16.9.1960, I am directed to say that the question or declaration the permanent posts in the Roadways Organization (including the Roadways Central Workshop Kanpur) as pensionable has been under consideration of Government for some time past. In this connection, the Governor has been pleased to order that the permanent gazetted and non-gazetted incumbents of the following three categories would be entitled to the contributory 10 Provident Fund cum Pension Rules:-

(a) The employees working in the office establishment of the Asstt. General Manager, General Managers, Service Managers, Chief Mechanical Engineer, Roadways Central workshop, Kanpur and the Headquarter office of the Transport Commissioner.

(b) Supervisory staff of the rank of Junior Station Incharge and above on the traffic side.

(c) Technical staff of the rank of Junior Foreman and above on the Engineering side.

2. The Governor has been further pleased to order, under note 3 Below Article 350 of the Civil Service Regulations that the rest of the permanent non-gazetted Employees both in the traffic and engineering sections of the organization, would be treated as non-pensionable posts referred to above, will be eligible for Provident Fund benefits in accordance with the provisions of the Employees Provident Fund Act.

3. I am also to add that Temporary Employment of the categories mentioned in para 1 above will be entitled to Provident fund benefits as provided under the Employees Provident Funds Act. As and when they became permanent, they will have the option to elect the contributory Provident Fund cum Pension Benefits in lieu of Employees Provident Fund.

4. As regards the grant of Provident Fund Benefits to other temporary and work charges employees of the Roadways organization necessary orders have already been conveyed to you in G.O. No. 14880/XXX-219/59 dated 29.7.1960.

Sd/-

Jt. Secy.

Copy forwarded under U.P. Parivahan Ayukta (Lekha) U.P. Lucknow endorsement NO. C-935FA/594FA/57 dated 1.11.1960 to all the General Managers, Asstt. General Managers, Service Managers, Accounts Officers and all other concerned for information and necessary action."

(Emphasis supplied)

22. A bare reading of Article 350 would manifest that service in non-gazetted posts in Government Technical and Industrial Institutions in the State of Uttar Pradesh does not qualify for pension and it will be covered under Contributory Provident Fund Scheme.

23. The State Government felt it necessary to evolve a new set of service conditions considering the nature of duties and functions of the Roadways. In the above quoted GO dated 28.10.1960, the State Government considered and declared some permanent gazetted and non-gazetted posts of the Roadways to be entitled for pension. Clauses (2) & (3) of GO dated 28.10.1960 clearly provided that only those covered in clause (1) of the GO would be entitled to pension whereas the rest of the permanent non-gazetted employees both in the traffic and engineering sections of the Roadways would be treated as non-pensionable posts and will be eligible for provident fund benefits in accordance with the provisions of the Employees Provident Fund Act. This provision made a specific reference to Note 3 of Article 350 of the Regulations.

24. It was also provided that temporary employment of the categories mentioned in para 1 will be entitled to provident fund. However, as and when they became permanent, they will have the option to elect the contributory provident fund cum pension benefits in lieu of employees' provident fund. In yet another circular dated 21.04.1961, it was again clarified that

the posts mentioned in clause (1) of GO dated 28.10.1960 should be treated as pensionable and those temporary employees falling in the said clause shall also be treated as pensionable from the date they were converted into permanent post.

25. The Corporation was constituted under Section 3 of the Act, 1950 w.e.f. 01.06.1972. By GO dated 07.06.1972 all the employees of the erstwhile Roadways holding permanent posts as per GO dated 28.10.1960 were declared entitled for pension except the following:

- (i) Those working on daily wages;
- (ii) Those appointed on *ad-hoc* basis;
- (iii) Those who had not completed minimum service period prescribed for the post;
- (iv) Those holding posts which were not declared pensionable;
- (v) Those who had been removed from service after departmental inquiry and those had been found guilty of criminal charges.

Subsequent to GO dated 05.07.1972, officers/employees of the Roadways and the officers and staff of the Roadways

working in the Office of the Transport Commissioner, whether permanent or temporary were considered to be on deputation under the existing terms and conditions of their services. The permanent staff of the Roadways were considered on deputation up till the date of their absorption permanently in the Corporation. It was also mentioned in the GO dated 05.07.1972 that the Government assures the Roadways employees that whenever service conditions of the employees of the Corporation shall be framed, the same shall not be inferior to the service conditions applicable to them under the Roadways at the time of absorption. The GO dated 05.07.1972 is reproduced hereunder:

“No. 3414/TEES-2-170 N/72

Sender

Shri Girija Prasad Pandey
Commissioner & Secretary
Government of Uttar Pradesh

To

Chief Manager
Uttar Pradesh State Road Transport Corporation
Lucknow

Dated: Lucknow July 5, 1972

Transport Section-2

Sub: Constitution of Uttar Pradesh State Road Transport Corporation and merger of the officers/employees of the Transport Organisation.

Sir,

After merger of the officers/employees working under Uttar Pradesh Roadways with State Road Transport Corporation, in connection with merger of services under the Corporation, I have been directed to issue the following, amending the Government order no. 3000/30-2-170/72 dated June 7, 1972:

(1) According to the provision of para (1) (A) of the above Government order, all those permanent or temporary officers/employees who before the constitution of State Road Transport Corporation were in the services of State Roadways, their services would be considered in the Corporation on deputation. For this deputation no period is being fixed now.

(2) The State Road Transport Corporation has under section 45 of the Transport Corporation Act have not made rules about the service conditions till now in connection with the officers and employees under it. Therefore, leaving the above discussed Annexure 1 (1) A of the above Government order dated June 7, 1972, the remaining annexures would be considered dismissed. But whenever the Corporation would make rules regarding service conditions, then in them this assurance of the Government would be included that the service condition of the officers/employees under the Corporation in any condition would not be contemptuous than those conditions which were available to them under the Uttar Pradesh State Roadways and their government service period, their seniority under the corporation, promotion, fixation of pay, right concerning leave and financial benefits would be considered in that way only as they would have remained in their being in government service.

Yours faithfully
(Girija Prasad Pandey)
Commissioner & Secretary

No. 2114 (1)/Tees-2-170N/72

Copy submitted to Accountant General, Government of Uttar Pradesh, Allahabad, for information and necessary action.

By order,
(Bhagwan Swaroop Saxena)
Dy. Secretary

No. 3414(2)/Tees-2-170N/72

Copy submitted to the following for information: -

(1) Transport Commissioner, Uttar Pradesh, Lucknow.

(2) Finance (Expenditure-7) Section

By order,
(Bhagwan Swaroop Saxena)
Dy. Secretary"

26. In exercise of power under Section 45 (2)(c) of the Act, 1950, the State Government framed the Road Transport Corporation Employees (other than officers) Service Regulations, 1981¹². Regulations 4 and 39 of the Regulations, 1981 being relevant are reproduced hereunder:

"4. Option by the employees of the erstwhile Government Roadways Department and other employees. - (1) An employee of the erstwhile U.P. Government Roadways Department who was placed on deputation with the Corporation and who has or is deemed to have offered for absorption in the Service of the Corporation in accordance with Rule 4 of the Uttar Pradesh State Roadways Organisation (Abolition of Posts and Absorptions of Employee) Rules, 1982 (hereinafter referred to as the said, Rules), shall with effect from August 28, 1982, sand so absorbed, and shall, accordingly cense to be an employee of the State Government with effect from the said date.

Provided that the terms and conditions of service of the employees so absorbed in the Service of the Corporation shall, subject to the provisions of G.O. No. 3414/XXX-2-170-N-72, dated July 5, 1972, and the said rules be governed by these regulations.

(i) Existing employees, who are not covered by sub-regulation (1) or those who are not exempted under Regulation 2, shall within one month of the commencement of these regulations, inform the appointing authority or such authority as the General Manager may in this behalf appoint whether or not they want to be governed by these regulations.

(ii) If they opt or fail to exercise their option for being governed by these regulations, their terms and

¹² 'Regulations, 1981'

conditions of appointment, so far as they are inconsistent with these regulations, shall stand rescinded:

Provided that, in respect of workmen where any of the provisions of these regulations is less favourable than the provisions of the U.P. Industrial Disputes Act, 1947, the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Factories Act, 1948 or of any other Act applicable to them, the provisions of such Act shall apply.

(iii) If such persons do not opt for being governed by these regulations, their services may be terminated in accordance with the terms of their appointment."

"39. Pension and other retirement benefits-(1)(i) Subject to the provisions of clause (ii) of this sub-regulation, an employee of the Corporation shall not be entitled to pension, but he shall be entitled to the retirement benefits mentioned in sub-regulation (2).

(ii) A person, who was the employee of the State Government in the erstwhile U.P. Government Roadways and has opted for the service of the Corporation, shall be entitled to pension and other retirement benefits in terms of the G.O. No.3414/302-170-N-72, dated July 5, 1972.

(iii) Such employees who have come in the service of the Corporation on pensionable posts on 1st June, 1972 or after that and now those posts have been declared non-pensionable under this Rule; the Corporation would contribute in the Provident Fund of such employees as desired under the provisions of Employees Provident Fund Scheme, 1952.

(2) Without prejudice to the provisions of sub-regulation (1) an employee (including an employee who was in the service of the State Government in the erstwhile U.P. Government Roadways Department), shall be entitled to the following retirement benefits:

(i) Employees Provident Fund or the General Provident Fund, as the case may be;

(ii) Gratuity in accordance with the Payment of Gratuity Act, 1972 or the relevant Government Rules, as may be applicable;

(iii) Amount due under Group Insurance Scheme, 1976;

(iv) One free family pass in a year for journey within the State;

(v) A free family pass for his return to his home from the place of posting at the time of retirement in case he does not accept railway fare;

(vi) Any other benefit that may be allowed by the Corporation from time to time. "

27. Regulations 4 and 39 of the Regulations, 1981 as extracted above made it very clear that an employee of the Corporation shall not be entitled to pension, but he shall be entitled to the retiral benefits mentioned in sub-regulation (2) of Regulation 39. Only those employees of the State Government working in the Roadways who have opted for services of the Corporation shall be entitled to pension and other retirement benefits in terms of GO dated 05.07.1972. It is to be understood that there were temporary and permanent employees working in the Roadways and there were regular State Government employees who were also working in the Roadways. Under Regulation 39, quoted above, it is clearly demarcated that those State Government employees who have opted for service of the Corporation will be entitled for pension, otherwise an employee of the Corporation shall not be entitled to pension

and these employees will be entitled to retirement benefits as mentioned in sub-Regulation (2) of Regulation 39. At this juncture, it would be relevant to mention that the pension entitlement of the Roadways employees (who are not State Government employees) are controlled by GO dated 28.10.1960 which has already been dealt with in the preceding paragraphs.

28. By another GO dated 19.08.1993 it was again clarified that the employees/officers of the Roadways who before 28.07.1982 are working/promoted on pensionable post of the previous department, shall be entitled to pension on the terms set forth in this GO. Those employees who do not want to avail pensionary benefits shall submit their written consent to this effect in order to avoid dispute in future. Once again, GO dated 03.02.1994 was issued to the effect that such employees who before the constitution of the Corporation and promulgation of merger rules, had been on the pensionable post in the State Government, would be considered on deputation service and will be considered entitled for pension.

29. In order to examine the appellants' claim for pension it is necessary to dwell on the pre-requisites provided in the GO dated 28.10.1960. To be covered in the GO for receiving pension it is necessary for the appellants to plead and establish *firstly*, that they were holding permanent posts in the Roadways, and they fall in the three categories of employees referred to in para (1) of the GO. It is not the case of the appellants that they were made permanent by any express order issued by the Roadways management, nor they claim to be working in any of the three posts referred to in para (1) of the GO. Since para (2) of the GO clearly provides that the rest of the permanent non-gazetted employees both in the traffic and engineering sections of the organization, would be treated as non-pensionable and similarly, all temporary employees will also be non-pensionable, the appellants are not entitled to pension as per GO dated 28.10.1960. *Secondly*, the appellants are not covered under Article 350 as amended on 20.04.1997 of the Regulations to hold the pensionable posts inasmuch as despite amendment in the first part of Article 350 of the Regulations, Note 3 thereof has not suffered amendment which provides that service in non-gazetted posts in Government

Technical and Industrial Institutions in Uttar Pradesh does not qualify in the case of persons appointed to such posts on or after 15.11.1938. Since the Roadways is considered to be Technical and Industrial Institution, the appellants are covered under Note 3 of Article 350, and they are not entitled for pension.

30. The High Court, under the impugned judgment, has observed that the appellants having received retiral benefits including the benefit under the Employees Provident Fund Scheme, cannot be permitted to turn round and contend that they should also be given pension. We have also considered this aspect of the matter and we approve the observations of the High Court on the principle that a party to the litigation cannot be permitted to approbate and reprobate. See **National Council of Educational Research and Training vs. Shyam Babu Maheshwari & Ors.**,¹³ **Krishna Kumar vs. Union of India**¹⁴ and **Union of India vs. Kailas**¹⁵.

31. Similarly, in the matter of **V.K. Ramamurthy vs. Union of India & Anr.**,¹⁶ this Court considered the claim for

¹³ (2011) 6 SCC 412

¹⁴ (1990) 4 SCC 207

¹⁵ (1998) 9 SCC 721

¹⁶ (1996) 10 SCC 73

pension of those who opted for pension after a long gap of retirement and held in para 4 that the contributory provident fund retirees form a different class from those who had opted for pension scheme and as such they are not entitled to claim as of right to switch over from Provident Fund Scheme to Pension Scheme. Similar is the proposition in the matter of **All India Reserve Bank Retired Officers Association & Ors. Vs. Union of India & Anr.**¹⁷

32. In somewhat similar situation concerning employees of Oil Natural Gas Commission which was earlier run as a department of the Government of India prior to the enactment of Oil and Natural Gas Commission Act, 1959, this Court in **The Committee for Protection of Rights of ONGC Employees & Ors. Vs. Oil and Natural Gas Commission, through its Chairman & Anr.**,¹⁸ held thus in para 13:

“13. This indicates that the scheme of Contributory Provident Fund, by way of retiral benefit, envisaged by the Provident Fund Act, is in the nature of a substitute for old age pension because it was felt that in the prevailing conditions in India, the institution of a pension scheme could not be visualised in the near future. It was not the intention of Parliament that Provident Fund benefit envisaged by the said Act would be in addition to pensionary benefits. Section 12 of the Provident Fund Act seeks to protect the wages of an employee to whom the scheme framed under the said Act applies as well as the

¹⁷ (1992) Supp (1) SCC 664

¹⁸ (1990) 2 SCC 472

total quantum of certain specified benefits to which he is entitled under the terms of his employment. With that end in view, Section 12 prohibits an employer from reducing, whether directly or indirectly, the wages of an employee to whom the Scheme applies or the total quantum of benefits in the nature of old age pension, gratuity, provident fund or life insurance to which the employee is entitled under the terms of his employment express or implied. The said section proceeds on the basis that if an employee is entitled to any benefit in the nature of old age pension under the terms of his employment the said benefit would not be denied to him on the application of the Scheme. It is not the case of the petitioners that on June 30, 1961, when the Provident Fund Scheme was made applicable to the Commission, the petitioners had become permanent and were entitled to pension. It cannot, therefore, be said that on the date of the application of the Provident Fund Scheme to the Commission, the petitioners were entitled to pension under the terms of their employment. They cannot, therefore, invoke the provisions of Section 12 of the Provident Fund Act.”

33. In the matter of **Prabhu Narain vs. State of U.P.**¹⁹, (2004) 13 SCC 662, this Court held that to receive pension the employees must establish that they are entitled to pension under a particular rule or scheme. The following has been held in para 5:

“5. No doubt pension is not a bounty, it is a valuable right given to an employee, but, in the first place it must be shown that the employee is entitled to pension under a particular rule or the scheme, as the case may be.”

34. In yet another judgment rendered in **Rajasthan Road Transport Corporation & Anr. Vs. Mohini Devi**,²⁰ it is held thus in para nos. 7, 8 & 9:

¹⁹ (2004) 13 SCC 662

²⁰ (2013) 11 SCC 603

“7. The Division Bench has considered the Regulations but failed to notice that there is apparent error in the order passed by the learned Single Judge. Indisputably, the employees concerned retired from service in 1991 and 1992 and after retirement they were paid CPF including the share of employer's contribution. Hence, as per Regulation 3 of the Regulations, no right accrued to the appellants/employees to claim pensionary benefits without first depositing the amount and complying with the Regulations.

8. The matter was examined by this Court in *Pepsu RTC v. Mangal Singh* [(2011) 11 SCC 702 : (2011) 2 SCC (L&S) 322] wherein it was held as under: (SCC p. 722, paras 51-52)

“51. The common thread which runs through all these appeals canvassed before us is that the respondents have failed to comply with the terms and conditions of the Regulations, which govern the Pension Scheme. We have already considered the nature and effect of the Regulations, which are made under a statute. These statutory regulations require to be interpreted in the same manner which is adopted while interpreting any other statutory provisions. The Corporation as well as the respondents are obliged and bound to comply with its mandatory conditions and requirements. Any action or conduct deviating from these conditions shall render such action illegal and invalid. Moreover, the respondents have availed the retiral benefits arising out of CPF and gratuity without any protest.

52. The respondents in all these appeals, before us, have made a claim for pensionary benefits under the Pension Scheme for the first time only after their retirement with an unreasonable delay of more than 8 years. It is not in dispute, in some appeals, that the respondents never opted for the Pension Scheme for their alleged want of knowledge for non-service of individual notices. In other appeals, although the respondents applied for the option of the Pension Scheme but indisputably never fulfilled the quintessential conditions envisaged by the Regulations which are statutory in nature.”

9. We are, therefore, of the opinion that, in the facts and circumstances of the case and in view of the law laid down by this Court in the judgment referred to hereinabove, the impugned orders passed by the learned Single Judge [*Madugiri v. Rajasthan SRTC*, WP (C) No. 5425 of 1993 (Civil Writ 5425/1993), order dated 5-1-2006 (Raj)] and the Division Bench [*Rajasthan SRTC v. Madugiri*, Civil Special Appeal (Writ) No. 212 of 2006, decided on 11-10-2006 (Raj)] of the High Court cannot be sustained in law.”

35. The common thread in the above referred judgments of this Court is that pension is a right and not a bounty. It is a constitutional right for which an employee is entitled on his superannuation. However, pension can be claimed only when it is permissible under the relevant rules or a scheme. If an employee is covered under the Provident Fund Scheme and is not holding a pensionable post, he cannot claim pension, nor the writ court can issue mandamus directing the employer to provide pension to an employee who is not covered under the rules.

36. The appellant(s) have relied upon three earlier judgments of the Allahabad High Court in the matter of **Mirza Athar Beg** (*supra*), **S.M. Fazil** (*supra*) and **Shri Narain Pandey** (*supra*), therefore, it would be appropriate to discuss about the status of the said employees.

37. Mirza Athar Beg was promoted on the post of Junior Clerk in the Roadways w.e.f 07.09.1958 in the office of Assistant General Manager at Charbagh Depot, Lucknow and his promotion was regularised on 16.04.1960. The Division Bench of the High Court noted the fact that it is not the case of

the Corporation that the respondent Mirza Athar Beg was not a permanent employee of the Roadways. Thus, he was admittedly a permanent employee and, therefore, he was found to be falling in the category of pensionable post as per GO dated 28.10.1960.

38. S.M. Fazil was appointed as Assistant Traffic Inspector in the Roadways on 19.04.1949. He was promoted as Junior Station Incharge on 05.11.1956 and thereafter selected as Traffic Superintendent by the U.P. Public Service Commission in 1961. He was thereafter promoted to the gazetted class post of Assistant Regional Manager in 1981. His claim before the Tribunal was to the effect that pension, gratuity and commutation was sanctioned taking into account the services rendered w.e.f 05.11.1956 till 28.02.1983 leaving his earlier services from 19.04.1949 to 05.11.1996. Therefore, in view of Articles 350 and 370 of the Regulations, his period of service in temporary capacity or on temporary post was countable towards qualifying services for pension and gratuity and he was never absorbed in the services of the Corporation. Thus, the case of S.M.Fazil is entirely distinguishable on facts.

39. True it is that Shri Narain Pandey was granted pension by the High Court despite he having been appointed on the post of Junior Station Incharge on 05.05.1978. However, this judgment was rendered without any reference to GOs dated 16.09.1960 and 28.10.1960 as also Note 3 of Article 350 of the Regulations and the provisions of the Service Regulations, 1981. This judgment, therefore, cannot be relied upon as binding precedent as the same has been rendered without referring to the applicable GOs and Regulations.

40. In view of the above discussion, the appellant's reliance on the judgments rendered by the Allahabad High Court in the matter of **Mirza Athar Beg** (*supra*), **S.M. Fazil & 03 others** (*supra*) and **Shri Narain Pandey** (*supra*) are misplaced as in the said matters, the respective appellants were found to be holding permanent posts which were pensionable whereas in the present case, the appellants were neither holding permanent posts nor holding any pensionable posts as per GO dated 28.10.1960. Therefore, judgments in the matter **Mirza Athar Beg** (*supra*), **S.M. Fazil & 03 others** (*supra*) and **Shri Narain Pandey** (*supra*) rendered by the High Court are distinguishable on facts. The judgment in **Shri**

Narain Pandey (*supra*) has not considered the legal effect flowing from the GO dated 16.09.1960 and 28.10.1960 as also Note 3 of Article 350 of the Regulations. Therefore, the said judgment of the Allahabad High Court is of no assistance to the appellants.

41. For all the forestated reasons, civil appeal is liable to be and is hereby dismissed.

C.A. No. 895 of 2020, C.A. No. 896 of 2020, C.A. No. 897 of 2020, C.A. No. 898 of 2020, C.A. No. (s) _____ of 2024 @ SLP (c) _____ of 2024 @ Diary No. 10240 of 2020 & C. A. Nos. 899-901 of 2020.

CIVIL APPEAL NO. 895 OF 2020

42. This appeal has been preferred by UPSRTC assailing the order passed by the Division Bench of the High Court of Allahabad (Lucknow Bench) in Special Appeal No. 780 (S/B) of 2013 (UPSRTC & Anr. Vs. Roadways Karmchari Sanyukta Parishad, Uttar Pradesh & Anr.). Before the Division Bench, UPSRTC challenged the order passed by the learned Single Judge allowing the writ petition preferred by Roadways Karmchari Sanyukta Parishad, Uttar Pradesh,²¹ consequently,

²¹ 'RKSP'

directing the UPSRTC to extend the pensionary benefits and pay pension w.e.f 27.08.1982 onwards in the light of GO dated 05.07.1972 and in pursuance of order dated 22.05.1989 passed by the Division Bench of the High Court in Writ Petition Nos. 3273 of 1982, 3380 of 1982, 3400 of 1982, 3489 of 1982 and 4119 of 1982.

43. The issue before the Division Bench was in relation to extending pensionary and other benefits in respect of such employees who have been promoted on pensionable posts after 1982. According to the Division Bench, in other words, the issue is whether the cutoff date of 1982 fixed by the UPSRTC basing upon the provisions of absorption rules and the regulations framed thereunder are rational having nexus with the object of denying the benefit of pension to the members of the RKSP.

44. The Division Bench has referred to two GOs dated 07.06.1972 and 05.07.1972. In the first GO, the Officers/employees of the Roadways and those working in the Transport Commissioner's office and Head Office, whether permanent or temporary, shall be considered on deputation under existing terms and conditions of their service. After

period of six months, the Corporation shall take steps for their formal appointment and prepare service rules and those who are willing to be absorbed shall be absorbed in the Corporation for which required number of posts, both permanent and temporary, shall be created. It was also provided in Clause (4) of the GO dated 07.06.1972 that on absorption their service conditions shall not be inferior to those under the Government immediately before the absorption and their tenure of government service shall be considered for their seniority, promotion, pay fixation, entitlement for leave and for the benefits of retirement in the same way as would have been under the Government service.

45. In the second GO dated 05.07.1992, the earlier GO dated 07.06.1972 was amended. The GO dated 05.07.1972 as is quoted in impugned judgment passed in Special Appeal No. 780 (S/B) of 2013 has already been quoted in the preceding para 24.

46. The High Court referred to the above GOs as also the provisions of U.P. State Road Transport Corporation Employees (other than Officers) Service Regulations, 1981 to hold that in

view of the clear provisions in the GOs that the Roadways employees sent on deputation shall enjoy the same service conditions and whenever rules are framed their service conditions shall not be inferior to the conditions as were available under the Government immediately before their absorption, therefore, in view of Regulation 39 of the Regulations, 1981 notified on 19.06.1981, the erstwhile employees of the Roadways who have been promoted on pensionable posts after 1982 are entitled for pension.

47. Ms. Garima Prasad, learned senior counsel appearing for the UPSRTC would argue that the High Court has completely misread the contents of GOs dated 07.06.1972 and 05.07.1972 as also the rules and regulations. She would submit that these GOs have not made any specific provision concerning admissibility of pension which is dealt with in the earlier GO dated 28.10.1960. She would thus submit that GOs dated 07.06.1972 and 05.07.1972 would not be applicable to the employees of the erstwhile Roadways insofar as entitlement of pension is concerned and the same is restricted to the government employees who were absorbed in the services of the Corporation.

48. *Per contra*, Mr. Rakesh Khanna, learned senior counsel appearing for RKSP would submit that the High Court has correctly applied the GOs as also the rules and regulations while allowing the writ petition. He would also submit that the Division Bench has erred in directing, in the operative part of the order, that the pension shall be calculated from the date, employee(s) of the Corporation became member of the cadre of the post which is pensionable. According to him, the entire length of service should have been calculated for the purpose of pensionary benefits.

49. We have already discussed the legal effect of the GOs dated 07.06.1972 and 05.07.1972 read along with Clause (4) of Regulation 39 of the Regulations, 1981. To reiterate, only those employees of the State Government working in the Roadways who have opted for services of the Corporation shall be entitled for pension and other retirement benefits in terms of GO dated 05.07.1972. However, other employees of the Corporation shall not be entitled to pension, but they shall be entitled to the retirement benefits mentioned in sub-Regulations (1) and (2) of Regulation 39. Thus, it is amply clear

that only State Government employees absorbed in the Corporation shall be entitled to pension, “phrase that their service conditions shall not be inferior to the conditions as were available under the Government” would be applicable to the State Government employees for the purposes of according benefit of pension. The employees of Roadways who were not holding any pensionable post prior to their deputation or absorption in the Corporation, are not entitled to pension, as their service conditions in the erstwhile Roadways did not provide that they are entitled to pension. Thus, they have not been put to any inferior service conditions on their joining the services in the Corporation. In our considered opinion, the Division Bench of the High Court was not correct in holding that the members of the RKSP are entitled to pension even if they have been promoted after the cutoff date of 27.08.1982.

50. Insofar as the employees who were promoted in the UPSRTC on a pensionable post between 1972 to 1981, they are getting pension in view of GO dated 03.02.1984. This position has been admitted by Ms. Garima Prasad, learned senior counsel appearing for the UPSRTC. However, the members of the Union of RKSP for whose benefit the writ petition was

preferred, who were promoted on a pensionable post after the cutoff date, are not entitled for pension.

51. Accordingly, we set aside the order passed by the Division Bench and the learned Single Judge of the Allahabad High Court under the impugned judgment (s). Accordingly, the appeals filed by UPSRTC being C.A. No. 895 of 2020, C.A. No. 896 of 2020, C.A. No. 897 of 2020, C.A. No. 898 of 2020 and C.A. No. (s) _____ of 2024 @ SLP (c) _____ of 2024 @ Diary No. 10240 of 2020 are allowed and the appeals filed by Roadways Karamchari Sanyukta Parishad, UP being C.A. Nos. 899-901 of 2020 are dismissed.

C.A. No. 957/2020, C.A. Nos. 959-965/2020, C.A. No. 910/2020, C.A. No. 902/2020, C.A. No. 912/2020, C.A. No. 909/2020, C.A. No. 913/2020, C.A. No. 958/2020, C.A. No. 915/2020, C.A. No. 966/2020, C.A. No. 914/2020, C.A. No. 832/2020, C.A. No. 967/2020, C.A. No. 905/2020, C.A. No. 907/2020, C.A. No. 903/2020, C.A. No. 911/2020, C.A. No. 904/2020, C.A. No. 906/2020 & C.A. No. 908/2020

52. In view of our judgment allowing the appeals preferred by UPSRTC, these civil appeals are dismissed. _

.....J.

(HRISHIKESH ROY)

.....J.
(PRASHANT KUMAR MISHRA)

**JULY 26, 2024
NEW DELHI.**