Ram Chandra Pathak Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Feb-05-2003

Reported in : 2003(2)AWC1348

Judge : Sunil Ambwani, J.

Acts : Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 - Regulation 39; Uttar Pradesh Government Roadways Organisation (Abolition of Posts and Absorption of Employees) Rules, 1982

Appeal No. : C.M.W.P. No. 2603 of 2001 and other writ petitions

Appellant : Ram Chandra Pathak

Respondent : State of U.P. and ors.

Advocate for Def. : Sameer Sharma, Adv. and ;S.C.

Advocate for Pet/Ap. : V.K. Burman, ;I.R. Singh, ;R.K. Ojha, ;K.C. Shukla and ;Ranjeet Saxena, Advs.

Disposition : Petition dismissed

Judgement :

Sunil Ambwani, J.

1. By theaforesaid batch of writ petitions, the employees of U. P. State Road Transport Corporation, retired from non-pensionable post, have once again approached this Court with prayers directing respondents to award pension and other pensionary benefits, after taking back employee's share of provident fund from them. They have also claimed arrears of pension from the date of superannuation with interest @ 18%.

2. I have heard Sri V.K. Bunnan, Sri I.R. Singh, Sri R.K. Ojha, Sri K.C. Shukla, and Sri Ranjeet Saxena, advocates for petitioners ; and Sri Sameer Sharma for U. P. State Road Transport Corporation.

3. The State Government, established a temporary department in '1947, known as U. P. Government Roadways to run its own transport service. On 16.9.1960, a Government order was issued laying down revised terms and conditions of temporary employees of the Roadways. On 28.10.1960, another Government order was issued declaring certain posts in transport and roadways department as pensionary posts. This Government order was Issued in terms of Regulations 350 of the Civil Service Regulation, as adopted for its application in U. P. Regulation 350 is quoted as below :

'350. All establishments whether temporary or permanent shall be deemed to be pensionable establishment :

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

Exception : This rule does not apply to posts declared pensionable in Shram (Kha)Vibhag Government order No. 810 (E) XXXVI-B 1069/56 dated May 29, 1963 and Udyog (Gha) Vibhag Government order No. 375 ED/XVIII-D-AO-16-EP-60 dated June 5, 1963.'

4. For those Governments servants who held non-pensionable posts, provision was made for Contributory Provident Fund (Uttar Pradesh) Rules, 1933. For other Government servants holding pensionable posts, U. P. Contributory Provident and Fund-Pension-Fund Insurance Rules, 1948, were made applicable. The

Government order dated 28.10.1960 declaring certain posts in the Roadways Department as pensionable is quoted as below :

'In continuation of Government order No. 31040/XXX-135V/1959, dated September 16, 1960, I am directed to say that the question of declaring the permanent posts in the Roadways Organisation (including the Roadways Central Workshop, Kanpur) as pensionable has been under the 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 provident fund-cum-pension rules :

(a) The employees working inthe office establishment ofthe Assistant GeneralManager, GeneralManager, ServiceManager, ChiefMechanical Engineer,Roadways CentralWorkshop, Kanpur andthe Headquarter office ofthe TransportCommissioner.

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

(c) Technical staff of the rank of Junior Foremen andabove on the engineering side ; 'rank' means position/status but no post.

(2) The Governor has been further pleased to order, under note 3 below Article 350 of the Civil Services Regulation that the rest of the permanent non-gazetted Roadways employees both in the traffic and Engineering sections of the organisation, would be treated as non-pensionable. The incumbents of the permanent 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-charged employees of the Roadways Organisation necessary orders have already been conveyed to you in Government order No. 1488/XXX-219/50 dated 29.7.1960.'

5. On 21.4.1961 another Government order was issued by which the posts mentioned in para 1 of the Government order dated 28.10.1960 were treated to be pensionable, with effect from the date they were converted into permanent post. Yet another Government order dated 8.9.1961 provided that the permanent roadways employees mentioned in para 2 of the Government order dated 28.10.1960 will be treated as non-pensionable and they will be eligible for provident fund in accordance with the provisions of Employees Provident Fund and Misc. Provisions Act.

6. U. P. State Road Transport Corporation was constituted under Section 3 of the U. P. State Road Transport Corporation Act, 1950 with effect from 1.6.1972. Government order dated June 7, 1972 provided that as a result of constitution of a Corporation, Officers/Employees of the State Roadways Organisation and the officers and staff of Roadways of the Transport Commissioner, Head Office, whether permanent or temporary, shall be considered on deputation under existing terms and conditions of their service. During the period of deputation such pay and allowance would be admissible to these officers/ employees as would be admissible to them under the Government service. No additional pay and allowances etc. shall be admissible to them consequent upon taking them on deputation. Permanent officers/staff shall be considered on deputation up to the date of their absorption permanently under the Corporation, but their period of deputation as temporary officers/staff shall be at the most for six months. During this period, the Corporation should arrange for their formal appointment in service and also prepare service rules. As the temporary officers/staff will be appointed under the service of the Corporation, their deputation on outer service condition shall be ended. Clause 3 of the Government order provided that all these officers and employees of the Transport Organisation, whether permanent on any post

under their substantive Government service or not, willing to be absorbed in the service of the Corporation under Clause (5), shall be absorbed by the Corporation in its service and that the Corporation shall for this purpose create posts in necessary number and permanent and temporary posts of the grade. Clause 4 of the Government order provided as follows ;

'However, there shall be compulsory requirement of the said absorption that their service conditions under the Corporation, shall in the case be inferior to the conditions as were available under the Governmentimmediately 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 and would have been under the Government service,'

7. Clause 5 of the Government order dated 7.6.1972 provided for absorption by Invitation to be taken in the service, to accept the offer and to resign from the post in the Government from the date they will apply on the prescribed form. In case the option and the application are not received within the time limit, it shall be taken that the offer of the Corporation is not acceptable to them and in their case action under Clause 11 shall be taken which provides that service of such officers and employees who are purely temporary under existing Government service, shall be terminated on one month's notice or paying salary of one month in lieu thereof, and those who will be permanent on any post of Government cadre, shall be retired abolishing the post under the Government held by them, by giving three month's notice under Article 43 of Civil Service Regulations, and in this connection pension, gratuity etc. due to them under rules shall be sanctioned. Clause 8 provided that in respect of the pension, excluding family pension or gratuity ultimately to be paid to the officers and employees, the Corporation shall bear the burden fn proportion of their qualifying service as was received by the concerned officers/employees under the Government before going on deputation under the Corporation, the liability of the rest shall be on the Corporation. The Corporation also took the liability of family pension. Clause 9 provides that those officers and employees so absorbed, in case they were not on pensionable job, but they are members of contributory provident fund, shall be substituted by the provisions that in such cases the Government shall transfer the contribution with interest thereof

payable under rules for prior to the first date of deputation of theconcerned officers/employees in the Corporation, in the account to be opened under the Corporation, and thereafter the officers/employees so absorbed shall stop making subscription to their provident fund account, if any, and the amount deposited in their account with the interest thereof, upto the month just before the date of transfer payable under the relevant Government Rules, shall pass on to their new provident fund account which shall be opened under the Corporation.

8. The aforesaid Government order dated June 7, 1972 was amended by Government order dated July 5, 1972 providing that in accordance with para 1 (1) (ka) of Government order dated June 7, 1972 permanent and temporary officers/ employees who were in the service of Government roadways shall be treated to be on deputation in U. P. Road Transport Corporation without fixing any period for deputation. Para 2 of this Government order provided that the Corporation has not made any rules relating to the service of its officers/employees under Section 45 of the U. P. Transport Corporation Act and all the provisions except Clause 1 (1) (ka) of Government order dated June 7, 1972 shall be treated to be cancelled at present, but, whenever the service rules are framed by the Corporation, these will provide for the assurance of the Government that service conditions of the officers/ employees of the Corporation shall not be inferior to the service conditions which were available to these employees, prior to their absorption and that their seniority, promotion, pay, pension and leave and other rights and financial benefits will be considered to be the same as these employees were getting while they were in Government service.

9. Reading both the aforesaid Government orders together, it is found that all the employees of the erstwhile Government Roadways holding permanent pensionable posts were entitled to the same benefits whereas those employees who were working on daily wages ; appointed on ad hoc basis ; those who had notcompleted the minimum prescribed period of service on the post, entitling them to pensionary benefits ; those who held posts which were not declared pensionable and those who had not been removed from service after domestic enquiry did not draw those benefits.

10. U. P. State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981, made in pursuance of powers conferred under Section 45 (2) (c) of the Road Transport Corporation Act, 1950, in supersession of all existing regulations and orders were made and published by the State Government on 19.6.1981, These were to apply to all the employees (Other than Officers) except those who are working on deputation on contract and as part time, providing in Regulation 4 that the regulations shall apply to those persons who were in service of the State Government in the U. P. Government Roadways Department and were placed on deputation with the Corporation on terms of Government order dated 5.7.1972. Regulation 4 (1) provided that persons who are employees of the State Government in the erstwhile U. P. Government Roadways Department, shall within one month from the commencement of these regulations, inform the appointing authority or such authority as General Manager may in this behalf appoint, whether or not they want to opt for the service of Corporation, and if they opt the terms and conditions of their service shall be subject to the provisions of Government order dated July 5, 1972. If such persons do not or fill to opt for the service of Corporation, their services may be liable to be terminated by the State Government on the ground of abolition or nonavailability of the post on the principle of last come first go. Sub-regulation (2) provide that existing employees not covered by Sub-regulation (1) or those who are not exempted under Regulation 2, shall, within one month of the commencement of the regulation, inform the appointing authority or such authority as the General Manager, may in this behalf appoint, whether or not they want tobe governed by the regulations. If they do not opt, or fail to exercise their option for being governed by these regulations their terms and conditions of appointment, so far 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. It was further provided that if such persons do not opt for being governed by these regulations their services may be terminated in accordance with the terms and conditions their appointment.

11. Regulation 39 relevant for the purposes of pension is quoted as below :

'39 (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 Government order No. 3424/302-170-N-72, dated July 5, 1972.

(2) Without prejudice to theprovisions of Sub-regulation (1) anemployee (including an employeewho was in the service of the StateGovernment in the erstwhile U. P.Government RoadwaysDepartment, shall be entitled tothe 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 therelevant Government Rules, as may be applicable ;

(iii) amount due under Group Insurance Scheme, 1972.

(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.'

12. Government orders dated 7.1.1984, 16.7.1988, 22.6.1991, 8.9.1992, 18.9.1992, 6.12.1992, 18.9.1992, 4.9.1993, 6.12.1993, 3.2.1994 and 6.5.1995 and the Government orders dated 22.6.1995 and 28.11.1998 provided for removal of difficulties with regard to employees of erstwhile Government Roadways on non-pensionable posts, taken on deputation in the Corporation and for counting their service, and working out of the contribution or defaults committed by them in

respect of provident fund applicable to them ; as well as provided for contribution of the pension of those employees who were holding pensionable posts. These also took care of the deputation of some of the employees who had not given options for their absorption. These Government orders, however, did not substantively vary the rights of these employees who are governed by the Regulations of 1981.

13. The first round of litigation started in the year 1990 when some of the retired employees treated to be holding non-pensionable posts filed claim petitions before the State Public Service Tribunal, Lucknow claiming pension and pensionary benefits. The Tribunal by its final order dated 15.12.1998 decided the connected petitions and having considered the effect of Government orders dated 16.9.1960, 28.10.1960, 8.9.1961, 11.12.1962 and the effect ofestablishment of Corporation, the absorption of the claimants in the service of Corporation and their promotion to higher posts, divided these employees into four categories as provided in the aforesaid Government order dated 28.10.1960. Relying upon the Judgment in Har Bux Pathak v. U. P. State Road Transport Corporation, 1992 (1) UPLBEC 242, it found that the employees belonging to categories I, II and III being temporary employees, in exercise of option of their absorption for being made permanent were not entitled to pension. The Tribunal later on excluded those employees who fell in category IV and did not exercise the option of absorption. It was held that only those claimants who were retired as Junior Station Incharge or Senior Station Incharge in the traffic, or Junior Foreman and above in the engineering side alone can be said to hold pensionary posts at the time of retirement. The other petitioners who held posts lower to Junior Station Incharge on the traffic, and Assistant Mechanic or Mechanic below post of Junior Foreman, did not hold pensionable post at the time of retirement, and were entitled only to the benefit of Employees Provident Fund. The temporary employees on being made permanent on posts of and above rank of Junior Assistant Incharge from the traffic side and above, the post of Junior Foreman on engineering side were given option to switch over from the Employees Provident Fund to the Contributory Provident Fund Scheme within one year to the date of their retirement. Those who failed to exercise their option were not entitled to pensionary benefit. Those who did not complete 10 years of service on a pensionable post either as permanent or as

temporary employees were also not entitled to the benefit of pension, and that they had actually received retirement benefits under Employees Provident Fund Act. Relying upon the cases of State of Rajasthan v. Rajasthan Pensioners Samaj, 1991 (Supp) (2) SCC 141, in which Krishna Kumar v. Union of India, (1990) 4 SCC 207 was followed wherein the decision in the D.S. Nakara's casewas explained and distinguished ; All India Reserve Bank Retired Officer's Association and Anr. v. Union of India, 1992 (Supp) 1 SCC 664, and in the judgment of V.K. Rama Murthy v. Union of India, 1997 (1) UPLBEC 439, it was held by the Tribunal that if an employee who had superannuated, having received the benefit of Employees Provident Fund, the switching over of his retirement to Contributory Fund was not permissible.

14. In Har Bux Pathak v. State of U. P., 1992 (1) UPLBEC 242, this Court had the occasion to consider the effect of the aforesaid Government orders, in respect of petitioners who retired in the year 1974 holding the post of Assistant Traffic Inspector. It was held that the Government order dated 28.10.1960 was concerned primarily with the service condition of employees of U. P, Government Roadways generally leaving the question of admissibility of pensionary benefit, to be determined later by the Government. The policy relating to payment of pensionary benefit was spelt out by Government order dated 28.10.1960, and not by Government order dated 16.9.1960. The judgment of Har Bux Pathak was affirmed in Civil Appeal No. 32 of 1992 decided on 22.9.1992 holding that Government order dated 28.10.1960, was not applicable to all the employees who were already employed and were to be employed in Roadways. The appellant Har Bux Pathak had become member of the Employees Provident Fund Scheme, which was applicable to Government servants holding non-pensionable posts and he also withdrew his share as also the Government contribution at the time of his retirement. The concluding portion of the Judgment in special appeal dated 22.9.1992 is quoted as below :

'On a conspectus of the entire materials, we have, therefore, no hesitation in concluding that the Government order dated 28th October, 1960, was not applicable to all the employees who were already employed and were to be employed in the Roadways. While on this point, it must bementioned that the appellant himself became a member of the Employees Provident Fund Scheme framed under the Employees Provident Fund Act, which, as has already been noticed, was applicable only to Government servants holding non-pensionable posts. Records further indicate that he also withdrew his share of the C.P.F. as also the Government contribution at the time of his retirement. It is too late in the day, therefore, for the appellant to turn round and claim that he had been holding a pensionable post.

On the conclusions as above, we dismiss this appeal without any order as to costs.'

15. Some of the petitioners who retired from non-pensionable posts, and received the Employees Provident Fund including the contribution of the employer, filed writ petition before this Court, which were disposed of with direction to consider petitioner's representation. In leading Writ Petition No. 2603 of 2001 an order was passed by this Court. The representation was rejected by the impugned order dated 26.5.2000 observing that he was appointed as driver in U. P. State Roadways on 3.6.1962 and had retired on 31.5.1994 and as such, he was not entitled to pension in accordance with Government order dated 16.9.1960. Similar orders were passed by the Regional Manager in other writ petitions which are subject-matter of challenge in this third round of litigation.

16. Sri I.R. Singh leading the arguments submitted in support of Sri Shiv Narain Singh, in Writ Petition No. 19726 of 2000 that he was working as fitter in U.P.S.R.T.C. and was given promotion as Junior Foreman on 21,10.1981, and retired on 30.6.1997. It was contended that petitioner was State Government employee in the State Government Roadways and was on deputation with U.P.S.R.T.C. He was, as such, entitled for pension. Petitioner had not opted for the terms and conditions of the service of U.P.S.R.T.C. He has reliedupon the provisions of Regulation 39 (1) (ii) in submitting that a person who was an employee of State Government under erstwhile U. P. Government Roadways and had opted for service of the Corporation, shall be entitled to pension and other retirement benefits in terms of Government order dated 5.7.1972. The Government order dated 5.7.1972 provided that all the employees whether

permanent or temporary who were in Government Roadways prior to the establishment of U.P.S.R.T.C. will be treated in the Corporation on deputation without fixing any period of deputation and since no service rules were framed under Section 45 of the U. P. Transport Corporation Act, in respect of such employees, the provisions contained in para 1 (i) (a) o f Government order dated 7.6.1972 will be treated to be cancelled and that whenever service conditions were to be made by the Corporation, these were to be with the assurance that their service conditions shall not be inferior to the service conditions applicable to the officers and employees of Corporation under U. P, Government Roadways in respect of period of service, seniority, promotion, pension, pay, leave and other pensionary benefits applicable as if they were in Government service. It was thus argued that those petitioners who were entitled to pension as Government Employees will continue to get benefit of pension and pensionary benefits and thus having completed 38 years of service on 30.6.1997, petitioner was entitled to pension.

17. Sri Sameer Sharma, relying upon the aforesaid judgment in liar Bux Pathak case, as above, submitted that Government order dated 5.7.1972 only gave assurance to State Employees who were sent on deputation to the Corporation, that their service conditions will not be inferior to those existing prior to absorption of such employees in the Corporation. All such employees were absorbed in the Corporation in accordance with the provisions of U. P. Government Roadways Organisation (Abolition of Posts and Absorption of Employees) Rules, 1982 w.e.f.28.8.1982 and that till that date, all such employees were working on above pensionable post even in the Corporation. There was no change in the service condition of such employees and they were extended benefit of Employees Provident Fund Scheme availed by them. In reply to argument with regard to Regulation 39 of the Service Regulation, 1981, framed w.e.f. 19.6.1981, it was submitted that no post in the Corporation is pensionable and hence the petitioners were not prejudiced in any manner and that the provisions of the Government order dated 5.7.1972 were not violated. He had relied upon the judgment of this Court with regard to retirement age of such employees which was held to be 58 years as in respect of the employees of the Corporation and this Court held in Writ Petition No. 29846 of 2002 dated 29.7.2002 that since under the service

conditions applicable to such employees on 5.7.1972, they were to retire at the age of 58 years, they cannot be extended the benefits of extension of retirement age by the State Government to 60 years in the year 2001 ; and that inferior service conditions did not mean the applicability of such service conditions which were subsequently amended. Sri Sameer Sharma, relied upon the judgment of Apex Court in T. N. Electricity Board v. R. Veerasamy and Ors., 1999 (82) FLR 174, in respect of his contention that the employees of the T. N. Electricity Board who retired prior to 1.7.1986 were not treated alike to the employees retired after that date, as they did not belong to one class. The workmen, who had retired after receiving all the benefits available under the Contributory Provident Fund Scheme, ceased to be employees of the Board with effect from the date of their retirement. They form a separate class.

18. With the aforesaid submissions, this Court is posed with the question to reconsider the decision in Har Bux Pathak's case affirmed by the Division Bench in special appeal on the ground mainly that it did not consider the effect of the Government order dated 5.7.1972,and the effect of Regulation 39 (ii) of the U. P. Transport Corporation Employees (Other than Officers) Service Regulation, 1981.

19. The assurance given in para 4 of the Government order dated June 7, 1972 to all the officers/employees of the State Road Organisation that in the event of the provisions of absorption to be made in service regulations their service conditions, under the Corporation, shall in no case be inferior to the conditions as were available under the Government immediately before their absorption and that 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, and so far as the pension is concerned fructified into statutory Regulation 39 (1) (ii) of the Service Regulation of 1981 notified on 19.6.1981. It is provided that a person who was employed in the erstwhile Government and has opted in the service of Corporation shall be entitled to pension and other retiral benefits in the terms of Government order dated 5.7,1972, it is found that whereas it amended the Government order dated 7.6.1972 by deleting all the paras except para 1 (1) (ka) providing for considering all officers and staff relating to the work on Roadways of the Transport

Commissioner, Head Office on deputation under the existing terms and conditions of their service, an assurance was given that whenever service regulation shall be framed, the conditions of service shall not be inferior to those which were applicable to the Government servants prior to their absorption and that same conditions of service with regard to their seniority, promotion, pay fixation and other financial benefits shall be applicable as they would have received if they were in the Government service. It is admitted that all the petitioners were absorbed in the service of the Corporation. Under the conditions of their service, the employees who were not holding pensionable posts and were contributing to Employees ProvidentFund, continued to subscribe to the fund even after their absorption. They became the employees of the Corporation and their service conditions were regulated by the U. P. State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981. As Corporation employees, they were not entitled to pension. Petitioners at the time of absorption in service, as the employees of the U. P. Roadways on deputation with Corporation, were not holding pensionable posts and thus it cannot be said that upon their absorption, the service condition with regard to the fact that they were not entitled to pension was less advantageous than it was applicable to the Employees of Roadways before their absorption.

20. The Government order did not have the effect of legislation by reference. The intention of the Government order dated 5.7.1972 was not to continue the rules applicable to Government service applicable to the employees of Corporation holding nor pensionable service. Having been absorbed as employees of the Corporation, the service regulation applicable to the Corporation became applicable to such employees. The assurance given in the Government order dated July 5, 1972, was subject to the regulations to be framed for the employees of the Corporation, and thus the later portion of the assurance that their service conditions shall not be less advantageous, was applicable until the service rules were framed by the Corporation with regard to conditions of their service. In case Service Regulation, 1981, were not acceptable to such employees, they could have opted out from the service of the Corporation under Regulation 4 (1) (iii) of the Service Regulations, 1981.

21. In Writ Petition No. 29846 of 2002, Prem Shanker Mishra v. State of U. P. same view has been taken by this Court in its judgment and order dated 29.7.2002 in respect of the age of superannuation of the employees of the U. P. Government Roadways absorbed in the service of the Corporation. In this case, the Courtheld that the increase of age of superannuation by the State Government vide notification dated 28.11.2001 will not be applicable to these employees as it was not a part of their service conditions and that the amendment in the service conditions shall not be applicable after their absorption in the Corporation.

22. There is yet another aspect ofthe matter that almost all petitionershave retired long ago. For example inWrit Petition No. 2603 of 2001,petitioner retired on 30.5.1994 asSenior Station Incharge of theCorporation, FazalganJ Depot,Kanpur ; in Writ Petition No. 2604 of2001 petitioner retired from the postof Driver on 28.2.1986 working underRegional Manager of the Corporation,Allahabad Region, Allahabad and inWrit Petition No. 19726 of 2000petitioner retired on 30.6.1997 fromVaranasi Gramin Depot. All thepetitioners have received retiralbenefits including the entire amountof employees provident fund, gratuityand other benefits. They wereabsorbed in the service of theCorporation in the year 1982 andthereafter till the date of theirretirement, they did not make anyprotest with regard to the applicabilityof the Regulations. Having acceptedthe terms and conditions of theemployment as employees of theCorporation, they cannot be allowed toturn around after their retirement andclaim applicability of the serviceconditions as Government servants ondeputation with Corporation. In Stateof Rajasthan v. Rajasthan PensionersSamaj, 1991 (Supp) (2) SCC 141,Supreme Court upheld the judgmentof Constitution Bench in KrishnaKumar v. Union of India, (1990) 4 SCC207, explained and clarified thejudgment of Apex Court in D.S.Nakara's case, (1983) 1 SCC 305 andheld that contributory provident fundretirees are not entitled to claim aright to switch over from ProvidentFund Scheme to pension scheme onthe ground of violation of Article 14 ofthe Constitution of India. It was foundthat widows of Jodhpur C.P.F. retireesand pension retirees do not form onehomogeneous class but form twodifferent classes and, therefore, thewidows of C.P.F. retirees are not entitled to opt for pension scheme, as the right to opt for pension scheme cannot be inherited or exercised by the widows of the retirees.

23. It was held in Krishna Kumar's case that the right of each individual provident fund retiree is crystallized on his retirement after which no continuing obligation remains, while on the other hand, there is a continuing obligation of the State in respect of pension retirees. In the present case on the absorption of an employee holding non-pensionable posts in the Corporation, obligation of the State Government came to an end. These employees became employees of the Corporation and started subscribing to the Employees Provident Fund after transfer of the fund, from their account of Employees Provident Fund. They became members of the employees provident fund. The State Government was not required to contribute towards their pension fund as in the case of employees who were holding pensionable posts. Their rights as such crystallized on the date of their absorption in the Corporation in the year 1982. Now after their retirement, having received the retiral benefits and having ceased the relationship as employees of the Corporation, they cannot agitate their rights after a long period of time. They form a different class than the employees of the State Government holding pensionable posts on the date of absorption.

24. All the writ petitions are, accordingly, dismissed.