

State Of U.P. vs Virendra Kumar on 10 February, 2020

Equivalent citations: AIRONLINE 2020 SC 171, (2020) 3 SCALE 357

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Bench: M.R. Shah, Ashok Bhushan

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION(C)NOS.4802-4803 OF 2019

STATE OF U.P. & ORS. PETITIONERS

VERSUS

VIRENDRA KUMAR & ORS. RESPONDENTS

WITH

SPECIAL LEAVE PETITION(C)NO.4815 OF 2019

U.P. AVAS EVAM VIKAS PARISHAD & ANR. PETITIONERS

VERSUS

VIRENDRA KUMAR & ORS. RESPONDENTS

WITH

SPECIAL LEAVE PETITION(C)NO.4804 OF 2019

U.P. AVAS EVAM VIKAS PARISHAD & ANR. PETITIONERS

VERSUS

CHANDRA PAL SINGH & ORS. RESPONDENTS

WITH

SPECIAL LEAVE PETITION(C)NO.373 OF 2019

U.P. AVAS EVAM VIKAS PARISHAD & ANR. PETITIONERS

VERSUS

Signature Not Verified

SHIVASHRAY RAI & ORS.

Digitally signed by

..... RESPONDENTS

MEENAKSHI KOHLI

Date: 2020.02.10

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Reason:

WITH

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SPECIAL LEAVE PETITION(C)NO.386 OF 2019

STATE OF U.P.

..... PETITIONERS

VERSUS

SHIVASHRAY RAI & ORS.

..... RESPONDENTS

J U D G M E N T

ASHOK BHUSHAN, J.

We have heard Shri Raghvendra Singh, learned Advocate-General of State of U.P. for State of U.P. Shri Nikhil Majithia, learned counsel has appeared for respondent Nos.1 to 4. Shri P.K. Jain, learned counsel has also appeared for respondents.

2. Learned counsel for the parties have addressed their submissions only on the question as to whether judgment of this Court in State of U.P. vs. Preetam Singh, (2014)15 SCC 774, requires reference to a larger Bench or not.

3. Before we consider the submissions of respective parties, it is necessary to notice the subject matter of the dispute which was decided by this Court in Preetam Singh's case (supra). We also need to notice the facts and issues which have arisen in these Special Leave Petitions.

Preetam Singh's case

4. The State Legislature passed an Act to provide for the establishment, incorporation and functioning of a housing and development board in Uttar Pradesh, namely, the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965. (hereinafter referred to as the "1965 Act"). Section 3 provides that the State Government shall by notification in the Gazette establish a Board to be called the Uttar Pradesh Avas Evam Vikas Parishad (hereinafter referred to as "the Board or Parishad"). The Board was contemplated to be a body corporate.

5. The Board in the year 1973 has framed Regulations for providing contributory provident fund to its employees. On 21.02.1995, the Board proposed a pension/family pension and gratuity scheme in place of the contributory provident fund scheme for its employees. The State Government sent a reply to the proposal on 16.05.1996 that the State Government has no objection in implementing the pension/family pension and gratuity scheme for its employees, however, it will not extend any financial assistance to the Board for the scheme. The Board on 05.11.1997 framed Regulations under Section 95 of the Act, 1965 for pension/family pension and gratuity for its employees in place of earlier contributory provident fund scheme. The State Government vide letter dated 26.11.1997 directed for staying the implementation of pension scheme. The State vide letter dated 26.11.1997 directed for staying the implementation of pension scheme.

6. The State issued an order dated 14.04.1999 for implementation of pension/family pension and gratuity scheme in place of contributory provident fund scheme in Board with several conditions

enumerated therein. On 13.09.2005 the State Government again issued an order intimating the Board that it has been decided to stay the State Government's earlier order dated 07.05.2003 which was issued for implementation of the pension/family pension and gratuity scheme in place of contributory provident fund scheme in the Board. Again on 12.07.2007, another order was passed to the effect that there is no need to apply pension/provident fund scheme to those personnel of the Public enterprises/Corporations who are covered by Employees Provident Fund & Miscellaneous Provisions Act, 1952 of the Central Government and/or those to whom different Contributory Provident Fund Schemes are already applicable. The Writ Petition No.582(S/B) of 2000 (Preetam Singh and others vs. State of U.P. and others) was filed in the High Court of Judicature at Allahabad, Lucknow Bench challenging order dated 14.09.1999, 13.09.2005 and 12.07.2007. The writ petition was contested by the State of U.P. The High Court vide its judgment 16.01.2009 allowed the writ petition by the following order:

“For the foregoing reasons, the writ petition succeeds and is hereby allowed. The impugned orders dated 13.09.2005 copy of which is Annexure – 14 and the order dated 12.07.2007, copy of which is Annexure – 18 on the record, are hereby quashed, so far as they relate to U.P. Evam Avas Vikas Parishad. A writ in the nature of mandamus is issued directing the U.P. Avas Evam Vikas Parishad to implement its pension/family pension and gratuity scheme in accordance with its regulations framed on 05.11.1997.

Under the circumstances, there shall be no order as to costs.”

7. Aggrieved against the judgment dated 16.01.2009 of the High Court the State of U.P. filed an SLP (C.A.No. 6307 of 2010- State of Uttar Pradesh vs. Preetam Singh and others). This Court on 07.08.2012 stayed the order of the High Court but ultimately the civil appeal was dismissed by this Court on 23.09.2014 which judgment is reported in (2014) 15 SCC 774. This Court held that conditions of service of the employees do not constitute functions of the Board and as such the State has no jurisdiction to issue directions dated 13.09.2005 and 12.07.2007 regarding pension/family pension and gratuity scheme.

This Court also noticed the Regulations framed by the Board under Section 95(1)(f), namely, pension/family pension and gratuity scheme dated 19.05.2009. This Court while dismissing the writ petition directed the Board to release the pensionary benefits to the retired employees governed by the notification dated 19.05.2009, within three months. It was further held that in event any of the retired employees is entitled to financial dues in excess of those already paid under the Contributory Provident Fund Scheme, the said employee(s) will be paid interest on the said amount @ 9% p.a.

8. The State of U.P. by order dated 13.05.2015 issued directions to extend the pensionary benefits to the employees of the Board in compliance of the judgment of this Court dated 23.09.2014 in Preetam Singh's case (supra) under certain conditions mentioned therein.

Civil Appeal No.4802-4803 of 2019 (State of U.P. & others vs. Virendra Kumar & others etc.etc.)

9. On the basis of recommendations of the U.P. Pay Committee 2008, the State Government decided to implement 6th Pay Commission Report w.e.f. 01.01.2006. The State Government issued an order No. General-3- 1508/X-2008-308-97 dated 08.12.2008 on the subject:

“The Revision of Pension, Gratuity/Family Pension and commutation of retired/dead personals with effect from 01.01.2006 on the basis of the recommendations of the U.P. Pay Committee 2008.” The Government order in the last of paragraph 2 directed:

“But the aforesaid orders shall not be applicable to the judges of the Hon’ble High Court, Chairman and Members of the U.P. Public Service Commission, Teachers and Staff of added no Government Schools, Employees of Local bodies and public enterprises.”

10. Thus, the above Government order excluded the applicability of the said order to the employees of local bodies and public enterprises. Another Government order No.General-3-1515/X-2008-308-97 dated 08.12.2008 was also issued for employees who had retired prior to 01.01.2006. The said order was also not made applicable to local bodies and public enterprises. On 19.05.2009 the Regulation was framed by the Board, namely, U.P. Avas Evam Vikas Parishad Employees Pension/Family Pension and Gratuity Regulation. By the Government order dated 16.10.2009, the State Government sanctioned revised pay structure, pay band and grade pay and other allowances to the employees of different categories of Public Enterprises/Corporations in accordance with the decision taken on the recommendations of the Report as submitted by 7th U.P. Pay Committee 2008.

11. On 14.01.2010, the State Government has issued an order approving the pay band and grade pay and other allowances in the revised pay structure to the employees of Board, according to the decision taken on the recommendations of 7th U.P. Pay Committee 2008 to the employees of Public Sector/Corporations. In consequences to the Government order dated 14.01.2010, the Housing Commissioner issued the consequential order dated 23.01.2010. In the subsequent Government order dated 15.09.2011 it was clarified that arrears of revised pay for the period from 01.01.2006 to 13.01.2010 shall not be admissible to the Board employees. The State Government issued another letter dated 05.05.2015 regarding pensionary benefits to the employees of the Board in compliance of the order dated 23.09.2014 passed by this Court in Preetam Singh’s case. The Board issued a consequential order dated 05.05.2015. The Writ Petition No.12645(S/S) of 2016 (Chandra Pal Singh and others vs. State of U.P. and others) filed by the retired Junior Engineers and retired Class I and II Officers of the Board. Writ Petition No.10355(S/B) of 2017 (Virendra Kumar and others vs. State of U.P. and others) filed by another set of Officers and employees of the Board. In Writ Petition No.12645(S/S) of 2016 following prayers have been made:

“PRAYER WHEREFORE, it is most respectfully prayed that this Hon'ble Court may graciously be pleased: -

i. to issue a writ, order or direction in the nature of Mandamus commanding the respondents to re-determine the salary of the petitioners till their retirement and thereafter their pensionary benefits on the basis of Sixth Pay Commission Recommendation w.e.f. 01.01.2006.

ii. to issue a writ, order or direction in nature of Mandamus commanding the respondents to apply the provisions of the Government Order No.1508 dated 08.12.2008 on the officers of the Parishad, while suitably reading down the restrictive provisions about its non-application on the employees of U.P. Awas Evam Vikas Parishad in view of the Pension Regulations dated 15.05.2009 read with judgment and order of the Hon'ble Apex Court dated 23.09.2014. iii. to issue a writ, order or direction in the nature of Mandamus commanding the respondents to re-determine/re-fix the salary of the petitioners in terms of Sixth Pay Commission Recommendation w.e.f. 01.01.2006 till their retirement and thereafter re-determine their pensionary benefits as per revised last pay drawn and pay arrears of salary and revised pensionary benefits from the date of their retirement till date, in accordance with G.O. dated 08.12.2008, after deducting the amounts already paid towards pensionary benefits of the petitioners, within a period of 2 months.

iv. to issue a writ, order or direction in the nature of Mandamus commanding the respondents to grant the benefit of maximum gratuity of Rs.10 lac to the petitioners as per Government Order dated 08.12.2008. v. to issue a writ, order or direction in the nature of Mandamus commanding the respondents to pay arrears of salary & pensionary benefits calculated in terms of the Sixth Pay Commission Recommendation, including enhanced gratuity of Rs.10 lacs, along with payment of interest at the prevailing Bank rates, within a period of 2 months.

vi. to issue an ad-interim mandamus to the respondent authorities to pay the current pension of the petitioners in terms of Sixth Pay Commission Recommendation. vii. to pass such other order or direction, which this Hon'ble court deems fit and proper in the circumstances of the case. viii. to allow the writ petition with costs in favour of the petitioners.”

12. In Writ Petition (S/B)No. 10355 of 2017 (Virendra Kumar and others vs. State of U.P. and others) following prayers have been made:

“PRAYER Wherefore, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to :

(a) issue a writ of Certiorari or a writ, order or direction in the nature of Certiorari quashing the impugned order dated 05.05.2015 passed by the State Govt., and the consequential order dated 13.05.2015 passed by the Housing Commissioner, Parishad as contained in Annexure No.1 and 2 to the writ petition.

(b) Issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the respondents not to give effect to the impugned order dated 05.05.2015 passed by the State Govt., and the consequential order dated 13.05.2015 passed by the Housing Commissioner, parishad as contained in Annexure No.1 and 2 to the writ petition.

(c) issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the respondents to implement the Family Pension and gratuity Scheme in accordance with the notification dated 19.05.2009 issued by the Awas Evam Vikas Parishad contained in Annexure No.5 to the writ petition and to give the benefit thereof to the petitioners in deference to the judgment and order dated 23.09.2014 passed by the Hon'ble Apex Court in Civil Appeal no.6307 of 2010.

(d) issue any other appropriate writ, order or direction which this Hon'ble court may deem just and necessary in the circumstances of the case may also be passed; and

(e) allow the writ petition with costs.”

13. Both the writ petitions were contested by the State of U.P. The Division Bench of the High Court vide its judgment dated 16.03.2018 allowed both the writ petitions. The Division Bench took the view that the Government Order No.1058 dated 08.12.2008 would apply in its entirety to the employees of the Parishad by virtue of statutory Regulations, dated 19.05.2009. The Division Bench held that the exclusionary part under the Government Order dated 08.12.2008 insofar as it exempts its applicability upon the employees of Public Enterprises and local bodies, would have to be read down and held to be inapplicable, so far as employees of the public corporations are concerned. It held that the employees of the Parishad would have to be treated at par with the employees of the State Government and the Government orders issued for the employees of Government Corporations etc. by bureau of Public Enterprises would have no applicability. Both the writ petitions were allowed, operative portion is contained in paragraph 41 which is to the following effect:

“41. Accordingly, both writ petitions are allowed and the impugned orders dated 05.05.2015 and 13.05.2015 contained in Annexure No.1 and 2 to the Writ Petition No.12645(S/B) of 2017 are quashed to the extent they are contrary to the judgment passed by the Hon'ble Apex Court in the case of State of U.P. vs. Preetam Singh and others, Civil Appeal No.6307 of 2010. A mandamus is issued to the respondents to grant benefit of arrears of salary payable to the employees of Parishad w.e.f. 1.1.2006 to 13.01.2010, and to fix their pension/family pension and also release gratuity in accordance with the provisions of U.P. Avas Evam Vikas Parishad th Regulations dated 19 May, 2009, and in the light of the orders of the Hon'ble Supreme Court in Civil Appeal No.6307 of 2010 from the date of their entitlement alongwith interest @ 9% per annum within a period of two months from the date of production of certified copy of this order, failing which the petitioners shall be entitled and paid interest at the rate of 12% per annum.”

14. These SLPs have been filed challenging the Division Bench judgment dated 16.03.2018. Apart from State of U.P., U.P. Avas Evam Vikas Parishad has also filed SLP(C)Nos.4804 and 4815 of 2019. Other SLPs, SLP(C)No.386 of 2019 (State of U.P. and Shivashray Rai and others) and SLP(C)No.373 of 2019 (U.P. Avas Evam Vikas Parishad and another vs. Shivashray Rai and others) have been filed against the judgment dated 26.11.2018 passed by the Division Bench of the Allahabad High,

Lucknow Bench in Special Appeal No.610 of 2018.

15. Special Appeal No.610 of 2018 was filed by the State of U.P. challenging the judgment of learned Single Judge dated 16.08.2017 passed in Writ Petition No.9033(S/S) of 2016. Writ petition was filed by the employees of the U.P. Awas Evam Vikas Parishad seeking direction in the nature of mandamus commanding the respondents to re-determine the salary of the petitioners till their retirement and thereafter their pensionary benefits on the basis of 6th Pay Commission Recommendations w.e.f. 01.01.2006.

A mandamus was sought to apply the provisions of the Government Order No.1508 dated 08.12.2008 on the employers and officers of the Parishad while suitably reading down the restrictive provisions about its application on the employees of the Board. The writ petition was allowed by the learned Single Judge. A mandamus was issued to the respondents to grant benefit of arrears of salary payable to the employees of the Board w.e.f. 01.01.2006 to 13.01.2010, and to fix their pension/family pension, and also release gratuity in accordance with the provisions of Regulations dated 19.05.2009. Special Appeal filed against the said judgment has been dismissed by the Division Bench on 26.11.2018.

16. The issues raised in these SLPs filed against the judgment dated 26.11.2018 are almost similar as have been raised in SLP filed against the Division Bench judgment dated 16.03.2018.

17. The facts of the Preetam Singh's case as noticed above indicate that the main issue which came to be considered by this Court in Preetam Singh's case was as to whether the State Government has any jurisdiction to issue direction for non-implementing pension/family pension and gratuity scheme on the employees of the Board. The High Court in writ petition of Preetam Singh's case has set aside the orders of the State Government. The orders of the State Government dated 13.09.2005 and 12.07.2007 were quashed and mandamus was issued directing the Board to implement its pension/family pension and gratuity scheme in accordance with its Regulations framed on 05.11.1997. This Court in Preetam Singh's case dismissed the appeal of the State of U.P. affirming the judgment of the High Court, the effect of which judgment is that pension/family pension and gratuity scheme as framed by the Board is to be implemented. One of the submissions which was raised in Preetam Singh's case on behalf of the State of U.P. is that State Government had jurisdiction to issue direction as contained in the Government order dated 13.09.2005 and 12.07.2007 to the Parishad to not to implement pension/family pension and gratuity scheme which direction could have been issued under a statutory provision, namely, Uttar Pradesh State Control Over Public Corporation Act, 1975. The provision of Section 2 of the aforesaid Act has been noticed in paragraph 13 of the judgment in Preetam Singh's case. Paragraph 13 of the judgment is as follows:

“13. In raising a challenge to the impugned judgment rendered by the High Court on 16-1-2009, it was the vehement contention of the learned counsel for the State of Uttar Pradesh, that the scheme could not have been formulated, and given effect to in the absence of an express approval by the State Government. Insofar as the instant contention is concerned, the learned counsel for the appellant placed reliance on the

Uttar Pradesh State Control Over Public Corporation Act, 1975. Our pointed attention was invited to Section 2(1) thereof, which is being extracted hereunder:

“2. (1) Power to issue directions to statutory bodies.—Every statutory body (by whatever name called), established or constituted under any Uttar Pradesh Act, excepting Universities governed by the Uttar Pradesh State Universities Act, 1973 as re-enacted and amended by the Uttar Pradesh University (Re-enactment and Amendment) Act, 1974, shall, in the discharge of its functions, be guided by such directions on questions of policies, as may be given to it by the State Government, notwithstanding that no such power has expressly been conferred on the State Government under the law establishing or constituting such statutory body.” (emphasis supplied) Based on the aforesaid provisions, it was the submission of the learned counsel for the appellant, that the State of Uttar Pradesh, through its Communications dated 13-9-2005 and 12-7-2007, must be deemed to have issued directions to the Vikas Parishad, restraining it from implementing the Pension/Family Pension and Gratuity Scheme. The aforesaid directions, according to the learned counsel, were binding on the Vikas Parishad.”

18. This Court in Preetam Singh held that it is open to the State Government to issue directions on question of policy to all the Public Corporations in the State of Uttar Pradesh but the directions could only be issued in respect of questions of policy having a nexus to the “discharge of its functions”.

This Court held that functions of the Board are relatable only to the functions stipulated in Section 15 of the 1965 Act. Paragraphs 14 to 16 are as follows:

“14. We have given our thoughtful consideration to the first contention

advanced at the hands of the learned counsel for the appellant. There can be no doubt that it is open to the State Government to issue directions on questions of policy to all the Public Corporations in the State of Uttar Pradesh, in furtherance of the mandate contained in Section 2(1) of the 1975 Act. It would however be pertinent to mention that the above directions could be issued only in respect of questions of policy having a nexus to the “discharge of its functions”. Insofar as the Vikas Parishad is concerned, we are of the view that the functions of the Vikas Parishad are relatable only to the functions stipulated in Section 15 of the 1965 Act.

15. Section 15 aforementioned is being reproduced hereunder:

“15. Functions of the Board.—(1) Subject to the provisions of this Act and the rules and regulations, the functions of the Board shall be—

(a) to frame and execute housing and improvement schemes and other projects;

- (b) to plan and coordinate various housing activities in the State and to ensure expeditious and efficient implementation of housing and improvement schemes in the State;
- (c) to provide technical advice for and scrutinise various projects under housing and improvement schemes sponsored or assisted by Central Government or the State Government;
- (d) to assume management of such immovable properties belonging to the State Government as may be transferred or entrusted to it for this purpose;
- (e) to maintain, use, allot, lease, or otherwise transfer plots, buildings and other properties of the Board or of the State Government placed under the control and management of the Board;
- (f) to organise and run workshops and stores for the manufacture and stockpiling of building materials;
- (g) on such terms and conditions as may be agreed upon between the Board and the State Government, to declare houses constructed by it in execution of any scheme to be houses subject to the U.P. Industrial Housing Act, 1955 (U.P. Act 23 of 1955);
- (h) to regulate building operations;
- (i) to improve and clear slums;
- (j) to provide roads, electricity, sanitation, water-supply and other civic amenities and essential services in areas developed by it;
- (k) to acquire movable and immovable properties for any of the purposes before mentioned;
- (l) to raise loans from the market, to obtain grants and loans from the State Government, the Central Government, local authority and other public corporations, and to give grants and loans to local authorities, other public corporations, housing cooperative societies and other persons for any of the purposes before mentioned;
- (m) to make investigation, examination or survey of any property or contribute towards the cost of any such investigation, examination or survey made by any local authority or the State Government;
- (n) to levy betterment fees;

(o) to fulfil any other obligation imposed by or under this Act or any other law for the time being in force; and

(p) to do all such other acts and things as may be necessary for the discharge of the functions before mentioned.

(2) Subject to the provisions of this Act and the rules and regulations, the Board may undertake, where it deems necessary, any of the following functions, namely—

(a) to promote research for the purpose of expediting the construction of and reducing the cost of buildings;

(b) to execute works in the State on behalf of public institutions, local authorities and other public corporations, and departments of the Central Government and the State Government;

(c) to supply and sell building materials;

(d) to coordinate, simplify and standardise the productions of building materials and to encourage and organise the prefabrication and mass reduction of structural components;

(e) with a view to facilitating the movement of the population in and around any city, municipality, town area or notified area, to establish, maintain and operate any transport service, to construct, widen, strengthen or otherwise improve roads and bridges and to give financial help to others for such purposes;

(f) to do all such other acts and things as may be necessary for the discharge of the functions before mentioned.”

16. In our view, the State of Uttar Pradesh, had the right to issue directions only in respect of the functions assigned to the Vikas Parishad under Section 15 of the 1965 Act. The conditions of service of employees, in our considered view, do not constitute the functions of the Vikas Parishad, and as such, we are satisfied that the directions contemplated under Section 2(1) of the 1975 Act, do not extend to the directions issued by the State of Uttar Pradesh in the impugned Orders dated 13-9-2005 and 12-7-2007. We therefore find no merit in the first contention advanced by the learned counsel for the appellant.”

19. In paragraph 16 of the judgment as extracted above this Court held that “the conditions of service of employees, in our considered view, do not constitute the functions of the Vikas Parishad”. This Court also considered Sections 93 and 95 of the 1965 Act. This Court held that the Vikas Parishad is vested with the right to make regulations, so as to extend to its employees a scheme in the nature of pension/family pension and gratuity scheme. Ultimate directions were issued in paragraph 21 to the following effect:

“21. It is also necessary for us to determine the consequence of the State of Uttar Pradesh, having approached this Court, to assail the impugned judgment dated 16-1-2009. This Court having entertained the petition filed by the appellant, passed interim directions on 7- 8-2012, which had the effect of staying the implementation of the directions issued by the High Court, namely, of staying the implementation of the Notification dated 19-5-2009. As a result, the employees governed by the Notification dated 19-5- 2009, were paid their retiral dues under the Contributory Provident Fund Scheme. Since we have now affirmed the impugned judgment of the High Court, dated 16-1- 2009, it is apparent that all the eligible employees of the Vikas Parishad will be governed by the Notification dated 19-5- 2009. They will therefore be entitled to the pensionary benefits from the date of their retirement. Undoubtedly, they have been denied the said retiral benefits, consequent upon the interim orders passed by this Court, at the behest of the State of Uttar Pradesh. In the above view of the matter, we direct the Vikas Parishad to release the pensionary benefits to the retired employees governed by the Notification dated 19-5-2009, within three months from today. While determining the pensionary benefits payable to the eligible retired employees up to date, if it is found that any of the retired employees is entitled to financial dues in excess of those already paid under the Contributory Provident Fund Scheme, the said employee(s) will be paid interest on the said amount @ 9% p.a. The burden of the aforesaid interest component on the differential amount will be discharged by the Vikas Parishad in the first instance. The same shall, however, be recovered from the State of Uttar Pradesh, who is solely responsible for the interest ordered to be paid to the employees concerned.”

20. Learned Advocate-General submitted that the view as expressed by this Court in paragraph 16 that conditions of service employees do not constitute the functions of the Vikas Parishad and directions issued on 13.09.2005 and 12.07.2007 could not have been issued by the State Government are the views expressed by this Court without considering the relevant statutory provisions of 1965 Act. Under Section 8 of 1965 Act, the Board may appoint officers and servants of the Board subject to such control and restrictions as may from time to time be imposed by the State Government, by special or general orders. Thus, the appointments are to be made under the control of the State Government which clearly indicate that State can issue special or general orders with regard to appointments which can very well include conditions of service of the employees to be appointed. He submits that Section 92 of the Act occurring in Chapter X provides for control of State Government on Board and other local authority. It is further submitted that Section 94(2)(nn) empowers the State to make rules on any matter for which regulation may be made by the Board under Section 95. Thus, the State Government had power to make rules when the Board can make regulation with regard conditions of service of the officers and servants of the Board, the power has clearly been conceded to State Government to make rules with regard to conditions of service of officers and servants of the Board. It is submitted that in Preetam Singh’s case the attention of the Bench is not invited to Sections 8, 92 and 94(2)(nn) nor the aforesaid provisions have been considered in the judgment and had the Court adverted to the aforesaid provisions it could not have held that conditions of service of the employees do not constitute the functions of the Vikas Parishad. He further submits that Entry 41 of List II of the VIIth Schedule of the Constitution

empowers the State Legislature to frame law on public services and State has also executive power on all subjects where it has legislative power, thus, the State can exercise its executive power with regard to public services which include service conditions of the employees.

21. He further submits that functions of the Board as contemplated under Section 15 are wide enough and there are other functions entrusted to the Board in the provisions of the Act and when the Board is empowered to make regulations it is also one of its functions. It is submitted that the view expressed in the Preetam Singh's case in paragraph 16 is per incuriam as it has been expressed without considering relevant statutory provisions of Section 1965 Act as noticed above. It is further submitted that the direction issued by the State Government would prevail over Pension Regulations framed by the Board on 19.05.2009.

22. It is further submitted that the State while implementing 6th Pay Commission's Report had implemented with regard to the employees of Board by giving actual benefits w.e.f. 21.01.2010. He submits that the State Government has ample jurisdiction to issue directions with regard to the service conditions of the employees, officers of the Board and contrary view in Preetam Singh's case needs to be re-considered.

23. Shri Nikhil Majithia learned counsel appearing for the respondents submits that the question as to whether the State Government has power to issue directions to Parishad with regard to the service conditions of its employees has been correctly answered by this Court in Preetam Singh's case. He submits that there is no error in the judgment of this Court requiring any reconsideration. It is submitted that none of the conditions for making reference to a larger Bench is satisfied in the facts of the present case. Mere non-consideration of any statutory provision is no ground to refer the question to a larger Bench. The central question in the Preetam Singh's case was that powers of the State to issue directions with regard to service conditions of the employees of the Board which has been discussed elaborately and answered. Non- consideration of a limb of argument which could have been raised before the Court and has not been raised and decided is not a ground for making reference. Referring to Section 92 of the Act he submits that direction under Section 92 shall relate to functions of the Board as enumerated in Section 15 which does not include any direction pertaining to conditions of service of officers and servants of the Board. In Civil Appeal of Preetam Singh the State in its pleading has referred to Section 94(2)(nn) of 1965 Act. It is further submitted that issue of validity and legality of Government Orders dated 13.09.2005 and 12.07.2007 attained finality by the order of this Court in Preetam Singh's case judgment and their validity cannot be gone into in these proceedings. This Court is not exercising any review jurisdiction as far as Preetam Singh's case judgment is concerned and therefore the question of determining the validity and legality of the Government Orders dated 13.09.2005 and 12.07.2007 is not available to this Court in the present proceedings.

24. Shri P.K. Jain, learned counsel appearing for the respondents submitted that the State has the right to issue directions only in respect of the functions assigned to the Board under Section 15 of the 1965 Act and the conditions of service of the employees do not constitute the functions of the Vikas Parishad. He submits that all the respondents have retired long ago but their pensions have not yet been paid causing great prejudice to them. The State has the right to issue directions only to

the Vikas Parishad under Section 15 of the 1965 Act. The conditions of service of the employees do not constitute the functions of the Vikas Parishad.

25. We have considered the submissions of the parties and perused the records.

26. This Court in the judgment in Preetam Singh after considering the provisions of U.P. State Control Over Public Corporation Act, 1975 and some provisions of the 1965 Act laid down following:

(1) The conditions of service of the employees do not constitute the functions of the Vikas Parishad.

(2) The State Government can issue directions on question of policy only with regard to the specified functions as contemplated by Section 15 of the 1965 Act.

(3) The conditions of the service of employees not being functions of Board under Section 15 of the Act, the State Government has no jurisdiction to issue directions regarding pension/family pension and gratuity of the employees of the Parishad.

27. It has been submitted by the learned Advocate- General that the above proposition does not lay down the correct law. The Bench hearing Preetam Singh's case has not considered other relevant provisions of the 1965 Act and has fell in error in holding that the conditions of service of the employees is neither the function of the Parishad nor the function of the State Government.

28. In Preetam Singh's case, this Court has extracted Section 15 of the 1965 Act and held that the conditions of the service of the employees is not the function of the Parishad. We may first consider as to whether the above view taken in the Preetam Singh's case is correct or not.

29. Chapter III of the 1965 Act deals with the functions and powers of the Board. It is true that Section 15 does not include conditions of the service of the employees as one of the functions of the Board but Section 15(1) begins with words "subject to the provisions of this Act and the rules and regulations", thus, functions of the Board as enumerated in Section 15 are subject to the provisions of 1965 Act. Thus, functions of the Board as enumerated in Section 15 are not exhaustive and have to be read along with functions of the Board as per other provisions of the Act, rules and regulations. Section 8 of the Act is an appropriate illustration for the present purpose. Section 8 provides for appointment of officers and servants. Section 8 of the Act is as follows:

"8. Appointment of officers and servants.-

(1) Subject to such control and restrictions as may from time to time be imposed by the State Government, by special or general orders, the Board may appoint such officers and servants as it considers. necessary for the efficient performance of its functions.

(2) The Board may, with the previous approval of the State Government, appoint a servant of the Central or the State Government or of a local authority on any of the posts under it on such terms and conditions as may be agreed upon.”

30. Section 8 as extracted above indicates that appointment of officers and servants is also one of the functions of the Board. Supposing Board does not appoint any officer and servant can it carry out functions as entrusted by the Act on it, answer is obviously no. Thus, appointment of officers and servants is one of the functions of the Board and when power of appointment is given, power of laying down the conditions of service is implicit in it. In case where there are no rules or regulations for laying down terms and conditions of officers and employees of the Board, the Board can regulate the terms and conditions even by the executive orders. In Preetam Singh’s case attention of this Court was not drawn on the expression “subject to the provisions of the Act, rules and regulations” which was expression of extreme importance and clearly intended to amplify and add other functions to the Board as provided in the Act, rules and regulations. Provisions of Section 8(2) of 1965 Act indicates that the Board with the previous approval of the State Government appoint a servant of the Central or the State Government or of a local authority or any of the posts under it on such terms and conditions as may be agreed upon.

31. Thus, in case of appointment under Section 8(2) terms and conditions of appointment has to be laid down although with the agreement as agreed upon. Section 8(2) is clearly indicative that terms and conditions of the appointment are not alien to the functions of the Board. Section 95(1) which empowers the Board to frame regulations is as follows:

“Power to make regulations.- (1) The Board may, by notification in the Gazette, make regulations providing for –

(a).....

(f) the conditions of service of officers and servants of the Board;

(g).....”

32. As noted above Section 15(1) begins with the words “subject to the provisions of this Act and the rules and regulations”, thus, when Section 95(1)(f) provides making regulations by the Board for providing the conditions of officers and servants of the Board, making regulations on the above subject is also a function of the Board. Section 95, thus, has to be read in functions of the Board as contemplated by Section 15. The function contemplated by regulations has also to be added which is simple and plain meaning of the provision. The Bench deciding Preetam Singh’s case did not refer to Section 8, Section 95(1)(f) and without adverting to the relevant provisions which clearly indicate that conditions of service of the employees is also a function of the Board, the Bench deciding Preetam Singh’s case fell in error in holding that conditions of service do not constitute functions of the Board which opinion is not as per the provisions of the 1965 Act. Thus, the above opinion expressed by the Bench in Preetam Singh’s case is without referring to Section 8, Section 95(1)(f).

33. We may also refer to Section 92 which deals with control of the State Government over the Board and other local authorities. Section 92(2) is relevant for the present case. Section 92 of the Act has also not been referred. It was contended before us that the directions of the State Government pertaining to service conditions of employees are not contemplated by Section 92(2). Section 92(2) has its operation for carrying out the purpose of this Act. The words “purpose of this Act” are wide enough which encompass in itself the appointment of officers and staff of the Board. Hence, the State Government can as well issue directions under Section 95(2) regarding appointment of officers and servants. Section 92 has also not been considered in Preetam Singh’s case.

34. In view of the above, we are of the considered opinion that the Bench in Preetam Singh’s judgment in laying down that conditions of service of the employees do not constitute the functions of the Vikas Parishad erred, it having not considered other provisions of Sections 8, 92, 95(1)(f) and the expression subject to the provisions of this Act, rules and regulations as occurring in Section 15(1).

35. In event the functions of the Board includes conditions of the service of the employees of the Board the State Government shall have jurisdiction under 1975 Act as well under 1965 Act to issue directions to the Board with regard to appointment of officers and servants of the Board, the control and restrictions by the State Government are expressly provided in Section 8(1) when the appointment of officers and servants by the Board is expressly subject to control and restrictions as may from time to time be imposed by the State Government, it cannot be said that the State Government had no jurisdiction to issue directions regarding service conditions of the employees. The State Government has been given express rule making power with regard to all subject where regulations may be made by the Board under Section 95. Section 94(1) and (2)(nn) provides as follows:

“94.Power to make Rules.- (1) The State Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for –

(a)..... (nn) any matter for which regulation may be made by the Board under Section 95;

.....”

36. As noted above, the Board has power to frame regulations regarding conditions of service of officers and servants of the Board, the State Government shall have power to make rules on the above subject. Further, by virtue of Section 95(2) rules by the State has overriding effect. Section 95(2) is as follows:

“Section 95(2) If any regulation is repugnant to any rule than the rule whether made before or after the regulation shall prevail and the regulation shall to the extent of the

repugnancy be void.”

37. The above section is also indicative that there is no lack of jurisdiction in the State regarding service conditions of the officers and the servants of the Board. The State Legislature have legislative competence under Entry 41 List 5 of the VIIth Schedule of the Constitution, it has also the executive power to issue orders by virtue of Article 162 of the Constitution. The State, thus, can exercise its jurisdiction under Article 162 to issue executive orders regulating the conditions of service of the officers and servants employed in the affairs of the State.

38. A Constitution Bench of this Court in Rai Sahib Ram Jawaya Kapur and others vs. The State of Punjab, AIR 1955 SC 549, had occasion to examine Article 162 of the Constitution. Following was laid down in paragraph 7:

“(7).....Article 162, with which we are directly concerned in this case, lays down :

"Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws :

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

Thus under this article the executive authority of the State is executive in respect to matters enumerated in List II of Seventh Schedule.....”

39. The Constitution Bench further held that executive function comprises both the determination of the policy as well as carrying it into execution. In paragraph 13 the Constitution Bench laid down:

“(13) The limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up.

Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State.

The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of

the State.”

40. This Court in A.B. Krishna and others vs. State of Karnataka and others, (1998) 3 SCC 495, had laid down that it is the primarily the legislature, namely, Parliament or the State Legislature Assembly, in whom power to make law regulating the recruitment and conditions of service of persons appointed to public services and posts, in connection with the affairs of the Union or the State, is vested.

41. When the power to make law regulating the recruitment and conditions of service of persons is vested in the State Legislature it has ample jurisdiction to exercise executive power by issuing orders under Article 162.

42. The regulations dated 19.05.2005 regarding pension/family pension and gratuity scheme which have been relied in the Preetam Singh’s case itself contemplates that pension/family pension and gratuity scheme as admissible to officers and servants of the Government shall also apply to Board. The regulations clearly mention that the Government orders shall also be admissible to the officers and employees of the Board and at serial No.5 following was included “all orders of financial department of U.P. as relief to pension/family pension and gratuity”. When the Regulations 2009 itself contemplates issuance of Government order regulating pension/family pension and gratuity which was to be made applicable to the officers and servants of the Board, it does not appeal to reason that the State Government has no power to issue orders pertaining to pension/family pension and gratuity.

43. Due to the above reasons we are of the view that with regard to three aspects i.e. (1), (2) and (3) as noted above, the judgment in Preetam Singh’s case needs reconsideration. We formulate following questions to be considered by a larger Bench:

(1) Whether the judgment of this Court in Preetam Singh’s case laying down that conditions of service of officers and employees do not constitute the functions of the U.P. Avas Evam Vikas Parishad lays down the correct law more so when the judgment does not refer to provisions of Sections 8, 92, 94(2)(nn) of the 1965 Act ?

(2) Whether the view expressed in Preetam Singh’s judgment that functions of the U.P. Avas Evam Vikas Parishad are only the specific functions enumerated in Section 15 of 1965 Act which does not include the service conditions of employees of the Board lays down the correct law ? Whereas the functions of the Board referred to in other provisions of Act, Rules and Regulations as has been expressly provided in Section 15(1) by use of expression “subject to the provisions of this Act and the Rules and Regulations” shall also be functions of the Board which induces service conditions of officers and employees as per Section 95(1)(f) of the 1965 Act.

(3) Whether the State Government had no jurisdiction to issue directions regarding service conditions of officers and employees of the U.P. Avas Evam Vikas Parishad under the provisions of the 1965 Act and 1975 Act and all other enabling powers with

the State Government ?

44. Let the papers of these cases be placed before the Hon'ble the Chief Justice for constituting a larger Bench. We also request the Hon'ble Chief Justice to constitute the larger Bench on an earlier date looking into the fact that issues which are to be answered in the present SLPs are the issues pertaining to mostly retired employees whose payment of arrears of pension/family pension and gratuity are involved.

.....J. (ASHOK BHUSHAN)J. (M.R. SHAH) New Delhi, February 10, 2020.