

V.

(Civil Appeal No. 1789 of 2020)

[ASHOK BHUSHAN AND K. M. JOSEPH, JJ.]

238

*appellant-Corporation GPF Fund – For the employees who were entitled to grant of pension there is mention of only two funds that is pension fund and GPF fund – The employer's share was to be transferred to Pension Fund and employee's share shall be transferred to GPF Fund – Further, clause 11(b) of circular dated 02.07.1991 makes it clear that when the respondent was absorbed in appellant-Corporation the balance in CPF Account of the surplus employees would be transferred in GPF Account and the Pension Fund respectively – Since, the Certificate issued by the Regional Provident Fund Commissioner makes it clear that the contribution of employee and employer was transferred to the appellant-Corporation – Thus, it was the obligation of the appellant-Corporation to credit the amount in Pension fund and GPF fund – Neither Regulations, 1989 nor circular dated 02.07.1991 refers to any capital amount – There was no obligation of erstwhile employer of the respondent to transfer any capital amount – Neither any such capital amount was contemplated by 1989 Regulations or by scheme of absorption dated 02.07.1991 – There was no justifiable ground for the appellant for not sanctioning the claim of Pension of the respondent after his retirement – Therefore, the High Court did not commit any error in allowing the claim of the respondent for pension.*

**Dismissing the appeals, the Court**

**HELD: 1.** The contention which has been pressed by the counsel for the appellant before this Court is that there was no transfer of capital amount of the erstwhile employer of respondent. The counsel for the appellant has relied and refer to the letter dated 18.09.1998 issued by the Rajasthan State Agro Industries Corporation Limited. This has been brought on record as Annexure-P/1. A perusal of Annexure-P/1 indicates that appellant-Rajasthan State Road Transport Corporation by letter dated 29.07.1998 requested the Rajasthan State Agro Industries Corporation Limited for transferring capital value amount in regard to the respondent. The erstwhile employer of the respondent informed the appellant that capital value amount in regard to the absorbed employees is not due to the appellant-Corporation. The appellant was informed that contribution of Provident Fund amount is deposited in the account of Commissioner, Provident Fund, Government of India which can

- A be got transferred. The question to be answered is as to whether apart from transfer of employee's contribution and employer's contribution deposited in the account of Commissioner, Provident Fund, there is any other amount which required to be transferred to the appellant for the purpose of making the respondent eligible for the benefit of pension. Regulation 43 of the Rajasthan State
- B Road Transport Pension Regulations, 1989 is the provision of transfer of Pension Fund by Corporation. The Regulation makes it clear that except those employees who have opted for continuing to CPF, employer's share shall be transferred to the appellant-Corporation Pension Fund and the employees share with interest
- C shall be transferred to appellant-Corporation GPF Fund. For the employees who were entitled to grant of pension there is mention of only two Funds that is Pension Fund and GPF Fund. The employer's share was to be transferred to Pension Fund and employee's share shall be transferred to GPF Fund. Clause 11
- D sub-clause (b) of Circular dated 02.07.1991 also refers to only two accounts i.e. GPF Account and Pension Fund. As per clause 11(b) in an Enterprise having pension scheme, the balance in CPF Account of surplus employees would be transferred to absorbing Enterprise for credit to the GPF Account of the employees and the Pension Fund in proportion of employees own
- E subscription and organisation's contribution respectively. Thus, employee's contribution shall go to the GPF Account and employer's proportion should be credited to the Pension Fund. Clause 11(b) makes it clear that when the respondent was absorbed in appellant-Corporation, the balance in CPF Account of the surplus employees would be transferred in GPF Account and the Pension Fund respectively. The certificate issued by the
- F Regional Provident Fund Commissioner which has been filed at Annexure R-8 makes it clear that contribution of employee Rs.92504/- and contribution of employer Rs.101282/- have been transferred to the appellant-Corporation which was the amount
- G credited with Regional Provident Fund Commissioner. The entire amount having been transferred to the appellant-Corporation it was the obligation of the appellant-Corporation to credit the aforesaid amount in respect of Pension Fund and GPF Fund. Neither Regulations, 1989 nor Circular dated 02.07.1991 refers to any capital amount. There was no obligation of erstwhile
- H

employer of the respondent to transfer any capital amount. A  
Neither any such capital amount was contemplated by 1989  
Regulations or by Scheme of absorption dated 02.07.1991. The  
Circular dated 02.07.1991 is in conformity with the Regulations,  
1989 and a reading of Regulation 43 of Regulations 1989 as well  
as Circular dated 02.07.1991 makes it abundantly clear that for B  
benefit of Pension Scheme what was required to be transferred  
by the erstwhile employer was the employees contribution which  
was to get transferred into the GPF Account and the employer's  
contribution to be credited in the Pension Fund. Nothing more  
was required to be done by the respondent or erstwhile employer  
for fulfilling any condition or statutory requirement with regard C  
to the respondent's claim of pension. After transfer of the amount  
aforesaid, the respondent having given option regarding opting  
the pension scheme, it was statutory obligation of the appellant  
to credit both the aforesaid amounts and thereafter continues to  
deposit 10% in the Pension Fund and after retirement calculates D  
the pension accordingly. [Para 38][253-G-H; 254-A-H; 255-A-D]

2. The notification dated 12.02.1997 specially Clause 2(vi)  
on which reliance has been placed by the counsel for the appellant  
also does not refer to any sum as a capital amount which needs to  
be transferred to the appellant for making employee eligible for  
Pension. The circular dated 09.02.1999 filed by the appellant as E  
Annexure-P/2 does refer to capital amount but it relies on  
notification dated 12.02.1997 specifically on Clause 2(vi). Clause  
2(vi) of notification dated 12.02.1997 does not refer to any capital  
amount. Thus, the statement in Circular dated 09.02.1999 that  
only upon receipt of capital amount from Rajasthan State Agro F  
Industries Corporation Limited employees were entitled to get  
benefit of Corporation Pension is unfounded and without any basis.  
Clause 2(vi) contemplates that those employees who give their  
option under Employee Pension Scheme, 1989 their deducted  
Provident Fund Contribution amount of earlier service on  
receiving back from P.F. Commissioner Office by their employer G  
will be forwarded to Corporation. This Court has already noticed  
that both employee's contribution and employer's contribution  
which were deposited with Provident Fund Commissioner Office  
was transferred to Corporation. Thus, what was contemplated by  
Clause 2(vi) of notification dated 12.02.1997 was complied with. H  
[Para 39][255-E-H]

A        **3. This Court is satisfied that there was no justifiable ground for the appellant for not sanctioning the claim of pension of the respondent after his retirement. [Para 40][256-A]**

*Pepsu Road Transport Corporation, Patiala versus Mangal Singh and Others (2011) 11 SCC 702 : [2011]*

B        **6 SCR 564 – relied on.**

*Mahaveer Prasad Jain v. Jaipur Vidhyut Vitran Nigam Ltd. (SB Civil Writ Petition No. 3116 of 2004); Jaipur Vidhyut Vitran Nigam Ltd. through its Chairman and Anr. v. Mahaveer Prasad Jain 2008 (2) WLN 337 –*

C        **referred to.**

#### Case Law Reference

[2011] 6 SCR 564                      relied on                      Para 32

D        CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1789 of 2020.

From the Judgment and Order dated 05.03.2018 of the High Court of Judicature at Rajasthan, Bench at Jaipur in D.B. Special Appeal Writ No. 1799 of 2017.

E        With  
Civil Appeal No. 1812 of 2020

Dr. Ritu Bhardwaj, Sachin Mittal, P.B. Suresh, Vipin Nair, Karthik Jayshankar, Rishabh Sancheti, K. Paari Vendhan, Advs. for the appearing parties.

F        The Judgment of the Court was delivered by

**ASHOK BHUSHAN, J.**

G        1. These appeals have been filed by Rajasthan Road Transport Corporation and others (hereinafter referred to as Corporation) challenging the judgments dated 05.03.2018 and 30.08.2018 respectively of the Division Bench of Rajasthan High Court dismissing the D.B.Special Appeals filed by the appellants. Both the appeals having raised similar issues it shall be sufficient to refer the facts and pleadings in Civil Appeal No.1789 of 2020 for deciding both the appeals.

H        2. Goverdhan Lal Soni, the respondent No.1 was appointed as Junior Assistant on 02.04.1974 in Rajasthan State Agro Industries

Corporation Limited. The State Government closed the Rajasthan State Agro Industries Corporation Limited and declared all its employees as Surplus. The State Government took a decision to absorb services of all surplus employees in different Corporations. The Bureau of Public Enterprises, Government of Rajasthan issued a Circular on 02.07.1991 containing guidelines of absorption of surplus employees in public enterprises. The guidelines also contained provisions for various benefits to be extended to the absorbed employees. The Respondent No.1 in pursuance of Circular dated 02.07.1991 was absorbed by Rajasthan State Road Transport Corporation vide order dated 03.10.1996. The Corporation issued a notification dated 12.02.1997 in relation to the absorbed employees laying down the procedure for the employees, who want to opt either C.P.F Scheme or the G.P.F. and Pension Scheme.

3. The respondent gave his option on 22.03.1997 for Pension under Rajasthan State Road Transport Pension Regulations, 1989. In Rajasthan State Agro Industries Corporation Limited, the respondent No.1 was governed by Contributory Provident Fund Scheme and the Pension Scheme was not applicable in Rajasthan State Agro Industries Corporation Limited. The Corporation on 29.07.1997 noticing that the respondent No.1 after coming to the service of Corporation has given option of Pension directed for transfer of amount deposited in Provident Fund Account and family pension so that same can be deposited in the account of General Provident Fund as well as pension fund.

4. Rajasthan Agro Industries Corporation Limited wrote a letter dated 18.08.1998 to Financial Advisor of the Corporation referring to a letter of the corporation dated 29.07.1998 informing that Pension being not applicable in Agro Industries Corporation, Capital Value, amount in regard to absorbed employee is not due to corporation. The letter mentioned that in the Agro Industries Corporation, Provident Fund Scheme was applied in which regard contribution of Provident Fund is deposited in office of Commissioner, Provident Fund, Government of India, which amount can be transferred at the level of Corporation. Regional Provident Fund Commissioner transferred the contribution of Employees as well as contribution of Employer deposited with the Provident Fund Commissioner to the Corporation. Certificate of account transfer was issued transferring the aforesaid amount to the corporation.

5. A circular dated 09.02.1999 was issued by the corporation referring to earlier circular dated 12.02.1997 mentioning that those

- A employees who produce their option letter to get benefit of Rajasthan State Road Transport Corporation Employees Corporation Pension Regulations, 1989, only upon receipt of capital amount from Rajasthan State Agro Industries Corporation Limited, they shall be entitled to get benefit of Corporation Pension.
- B 6. The respondent, who had joined the corporation on 10.10.1996, wrote a letter dated 06.07.2010 to the Finance Advisor and Chief Accounts Officer of the Corporation praying for approval of pension. Letter also mentioned that in compliance of letter of Chief Manager dated 19.02.1997, CPF amount has been received by Corporation. The respondent No.1 sent several reminders with regard to approval of his pension. The
- C respondent was superannuated on 30.06.2012. A writ petition No. 8847 of 2012 was filed by the respondent No.1 in the High Court of Rajasthan, Bench at Jaipur, praying for following reliefs: -
- D *“(i) By issuing an appropriate writ, order or direction to the Respondents to consider the case of petitioner for extending the benefits of the GPF and Pension Scheme of 1989 in the light of the condition No.11(b) of the Circular dated 02.07.1991 by taking note of his option form for the same.*
- E *(ii) Hon’ble High Court may kindly quash and set aside the circular dated 09.02.1999 (Annexure-8) issued in the garb of Notification dated 12.02.1997.*
- (iii) Hon’ble High Court may kindly direct the respondent to grant pension to the petitioner if petitioner gets retired during the pendency of the writ petition.”*
- F 7. Learned Single Judge of the High Court by judgment dated 05.07.2017 after noticing the submission of writ petition as well as the corporation, held that writ petitioner had already opted for Pension, his case cannot be distinguished from an earlier judgment of High Court dated 24.05.2007, **Mahaveer Prasad Jain Versus Jaipur Vidhyut Vitran Nigam Ltd. SB Civil Writ Petition No. 3116 of 2004.** Learned
- G Single Judge allowed the writ petition directing that writ petitioner be treated to be entitled to get pension, however, the same would be subject to petitioner returning the amount under the CPF Scheme. The appellant aggrieved by the judgment of learned Single Judge filed D.B.Special Appeal(writ) No.1799 of 2017 before the Division Bench which appeal
- H was dismissed on 05.03.2018. This appeal has been filed challenging the judgment of the Division Bench dated 05.03.2018.

8. In Civil Appeal No.1812 of 2020, the respondent Mangla Ram Aanwala was also initially appointed in Rajasthan State Agro Industries Corporation Limited and in pursuance of circular dated 02.07.1991, he was also absorbed in the corporation by order dated 03.10.1996 on the post of Junior Accountant. Respondent also gave an option on 25.02.1997 for opting for GPF and Pension Scheme. On 30.06.2012, the respondent also attained the age of Superannuation. Not being given the benefit of GPF and Pension, S.B.Civil Writ Petition No.8100 of 2017 was filed by the respondent which was allowed by learned Single Judge on 29.11.2007 in terms of judgment of the learned Single Judge in writ petition of Goverdhan Lal Soni(Supra). The appellant filed Special Appeal Writ No.1314 of 2018 which has been dismissed on 30.08.2018 against which Civil Appeal No.1812 of 2020 has been filed.

9. We have heard Mrs. Ritu Bhardwaj for the appellant and Shri Rishabh Sancheti and Shri P.B.Suresh for the respondents.

10. Learned Counsel for the appellant submits that respondent was absorbed from Rajasthan State Agro Industries Corporation Limited where Pension Scheme was not applicable and the respondent was governed only by Contributory Provident Fund (CPF) Scheme. It is submitted that the absorption of Employees in Rajasthan State Road Transport Corporation was on the terms and conditions as laid down in circular dated 02.07.1991 of Bureau of Public Enterprises, Government of Rajasthan. The Agro Industries Corporation from where the respondent had come on absorption in Rajasthan State Road Transport Corporation was covered only by CPF Scheme, hence, for availing the benefits of Pension Scheme the former Organization of the respondent was liable to transfer not only the balance in CPF Account but Pension Fund in proportion of Employees own subscription and Organization's contribution respectively.

11. The Rajasthan State Agro Industries Corporation Limited vide letter dated 18.08.1998 having refused to transfer the capital value amount regarding absorbed employee, the conditions under para 11(b) of Circular dated 02.07.1991 were not fulfilled and the corporation cannot undertake the liability of payment of pension.

12. It is submitted that on retirement of the respondent, entire benefit under the CPF Scheme as well as Gratuity of Rs.10 Lakhs and other benefits were taken by the respondent. It is submitted that respondent is already getting the pension from Employees Provident



A Fund Organization. The respondent has also availed the benefit of Loan of amount of more than Rs.18 Lakhs from the Corporation which was possible only due to the reason that the respondent was member of CPF Scheme and he can avail loan out of contribution of the employees as well as the contribution of the Employer.

B 13. It is further submitted that both learned Single Judge and Division Bench had not adverted to mandatory conditions as given in paragraph 11(b) and without recording any satisfaction and finding that the mandatory condition has been fulfilled, direction has been issued for grant of Pension. The respondent who has already availed the benefit under CPF Scheme cannot be directed to given the benefit of Pension  
C which shall amount to extending the double benefits.

14. Learned counsel appearing for the respondents in both the appeals have refuted the submission of the counsel for the appellant and submits that the entire contribution of the respondent which was credited were transferred by the Regional Provident Fund Commissioner with regard to which a certificate of account transfer has also been issued by  
D Regional Provident Fund Commissioner which has been brought along with the counter Affidavit filed on behalf of respondent No.1, Goverdhan Lal Soni. Regional Provident Fund Commissioner having transferred the entire amount to the corporation, nothing more was due to be transferred.

E 15. The respondent has exercised the option of Pension benefit within the period prescribed i.e. before 31.03.1997. The case of the respondent was fully covered by the judgment of the Rajasthan High Court dated 05.07.2017 in Mahaveer Prasad Jain's Case. He submits that the judgment of learned Single Judge dated 05.07.2017 was also  
F affirmed by the Division Bench vide judgment dated 19.12.2007 in **Jaipur Vidhyut Vitran Nigam Ltd. through its Chairman versus Mahaveer Prasad Jain**, which appeal was dismissed on 19.12.2007.

16. It is submitted that Special Leave Petition against the Division Bench judgment dated 19.12.2007 has also been dismissed by this Court vide its order dated 09.05.2008 in Special Leave to Appeal (Civil)  
G No.10904 of 2008. The case of Mahavir Prasad Jain was also a case of absorption from Rajasthan State Agro Industries Corporation Limited into Rajasthan State Electricity Board (Jaipur Vidhyut Vitran Nigam Ltd.).

H 17. The notification dated 12.02.1997 laid down procedure to be adopted in relation to absorbed employees. Subsequent circular dated

09.02.1999 informing that only on transfer of Capital amount from the concerned department benefit of Pension can be extended was not applicable on the respondent No.1 since he was already covered by 1991 circular and has exercised his option on 22.03.1997 with regard to receiving of payment under GPF Scheme as well as Gratuity. With regard to Pension under CPF Scheme it is submitted that the said pension has been accepted since the respondent had no option. The gratuity amount was paid directly in account of the respondent.

18. It is further submitted that both the Rajasthan State Agro Industries Corporation Limited as well as Rajasthan State Road Transport Corporation are two arms of the Government and it was the State responsibility to ensure that the respondent No.1 could have received the Pension in pursuance of his option exercised on 22.03.1997.

19. Learned counsel for the parties have relied on several judgments of this Court and Rajasthan High Court which shall be referred to while considering the submission in detail.

20. From the pleadings of the parties and materials on record, following undisputed facts have emerged:-

- i) the respondents in these appeals were employees of Agro Industries Corporation who were declared surplus after the Agro Industries Corporation was closed.
- ii) Bureau of Enterprises issued guidelines dated 02.07.1991 for absorption of surplus employees of the State Public Enterprises. The guidelines enumerated the benefits and mechanism for receiving the benefits by the absorbed employees.
- iii) that by order dated 03.10.1997, the respondents were absorbed in Rajasthan State Road Transport Corporation. The respondents while working under the Rajasthan State Agro Industries Corporation Limited were covered by only CPF Scheme.
- iv) Both Employees and Employer's contributions towards the Provident Fund were deposited with the Regional Provident Fund Commissioner. The Regional Provident Fund Commissioner transferred both Employees contribution of Provident Fund as well as Employer's contribution of Provident Fund to the Rajasthan State Road Transport

A Corporation and certificate of account transfer was also issued by office of Regional Provident Fund Commissioner, certifying the above said transfer. After the absorption, respondent opted for the Pension Scheme within the prescribed period i.e. 31.03.1997.

B v) The respondent in Rajasthan State Road Transport Corporation were continued in the CPF Scheme and the contribution of the Employees and Employers were deposited and after retirement of the respondent, the entire amount accumulated has been paid to the respondent with gratuity and other benefits.

C 21. The corporation has both CPF and Pension Scheme. The Pension Scheme which is applicable in the Corporation is Rajasthan State Road Transport Corporation Employees' Pension Regulations 1989. Regulation 3 of the Regulations, 1989 provides for exercise of option by the existing regular employees for pensionary and gratuity benefits. Bureau of Public Enterprises, Government of Rajasthan, had issued  
D guidelines dated 02.07.1991 under which surplus employees of State Public Enterprises were to be absorbed in other Public Enterprises.

22. Before we enter into the submissions raised by the counsel of the parties it is necessary to notice the relevant statutory Regulations applicable in the RSRTC and the Circular dated 02.07.1991 by which  
E Bureau of Public Enterprises, State Enterprises Department, Government of Rajasthan issued terms and conditions for absorption of surplus employees of State Public Enterprises. The Rajasthan State Road Transport Corporation Employees Pension Regulations, 1989 have been framed in exercise of power under Section 45 of the Road Transport  
F Corporation Act, 1950. Regulation 3(1) defines 'option' which is to the following effect:

G "3(1) 'Option' means a written consent of the existing regular employee for pensionary and gratuity benefits alongwith the adoption of the General Provident Fund Regulations 1989 or to continue as member of the existing CPF scheme covered under the BPF Act, 1952 within a period of 90 days from the date of publication of RSRTC Pension Regulations. Any existing employee who does not exercise the option within specified period of 90 days shall be deemed to have exercised option in favour of the Pension & CPF Regulations."

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23. Regulation 3(k) has defined “existing employee” as meaning A  
‘an employee who is in service of the Corporation as on 01.04.1989’.  
The option under Regulation 3(l) was contemplated from existing  
employee.

24. Several employees including the respondent who became B  
surplus in their earlier employment were absorbed by Rajasthan State  
Road Transport Corporation vide order dated 03.10.1996. The  
Corporation issued a notification dated 12.02.1997 with regard to 30  
employees who had come from Rajasthan State Agro Industries  
Corporation Limited, out of whom some employees wanted to take  
benefit of Contribution Provident Fund and some employees wanted to C  
take benefit of Corporation Pension Scheme. The notification contained  
necessary instructions with regard to the above. Learned counsel for  
the appellant has relied and referred to Clause 2(vi) of the notification  
which is relevant with regard to the respondent. Clause 2(vi) is as follows:

“2(vi) Those employees who give their option under Employee D  
Pension Scheme, 1989, their deducted Provident Fund  
Contribution amount of earlier service on receiving back  
from P.F. Commissioner office by their employer will be  
forwarded to Corporation as per instructions given by  
R.S.R.T. Corporation about pension, gratuity, P.F. and Leave  
encashment etc. For receiving the above contribution after E  
editing by Accounts Department (Establishment), Head  
Office, this amount will be received. After receiving amount,  
concerned amount of pension to Manager (Pension) and  
concerned amount of General Provident Fund to A.G.M.  
(G.P.F.) will be forwarded.”

25. After issuance of notification dated 12.02.1997, the Corporation F  
asked for option from employees who were absorbed in the Corporation  
to give their option. As noted above, the option under Regulation 3(l)  
was to be taken from the ‘existing employees’ but after absorption of  
employees in the Corporation from Rajasthan State Agro Industries  
Corporation Limited, the Corporation adopted same statutory mode with G  
regard to the absorbed employees as per statutory scheme. Hence, option  
was asked from absorbed employees. The respondent gave option on  
27.03.1997, i.e., before 31.03.1997 which was last date for option.

26. Another Regulation which needs to be noted is Regulation 43 H  
of Regulations, 1989 which deals with transfer to pension fund by  
Corporation. Regulation 43 is as follows:

A       **“43. TRANSFER TO PENSION FUND BY CORPORATION**

The Corporation shall transfer the pension contributions @ 10% on the basic wages plus D.A. to the R.S.R.T.C. pension Fund latest by 10<sup>th</sup> of succeeding month.

B       The employer’s share with interest except for those existing employees as on 01.04.1989, who have opted for continuing the C.P.F. benefits shall be transferred to the R.S.R.T.C. Pension Fund and the employee’s share with interest shall be transferred to the R.S.R.T.C. GPF Fund.”

C       27. The second part of Regulation 43 as extracted above contemplates transfer of employer’s share for existing employees who have opted for Pension Fund and employees’ share with interest in the G.P.F. Fund.

D       28. Clause 2(vi) of notification dated 12.02.1997 as extracted above is also in the same line as of Regulation 43.

29. The respondent having opted for pension, Regulation 43 read with notification dated 12.02.1997 becomes relevant and applicable with regard to the respondent.

E       30. Now, we come to the Circular dated 02.07.1991 issued by the Bureau of Public Enterprises, Government of Rajasthan, which is the guidelines for absorption of surplus employees of State Public Enterprises. We had heard this appeal earlier and reserved the judgment. At the time of preparation of judgment we found ambiguity in the record of the appeal pertaining to correct wordings of clause 11(b) of Circular dated  
F       02.07.1991. By our orders dated 29.07.2020 we directed both the parties to bring on record correct clause 11(b) of Circular dated 02.07.1991. In  
G       pursuance of our order dated 29.07.2020 both the parties have filed their affidavits. In the affidavit filed in application I.A.No.76182 of 2020 filed by the respondent, the copy of Circular dated 02.07.1991 has been brought on record. At the time of hearing on 14.08.2020, learned counsel for the petitioner has also not disputed the correctness of the copy of the Circular dated 02.07.1991 as brought on the record by respondent. Clause 11 of the Circular dated 02.07.1991 which is relevant for the present case brought on record by I.A.No.76182 of 2020 is to the following effect:

H       “11. In case the surplus employees covered under CPF Scheme, on absorption:-

(a) In an enterprise having CPF Scheme, the balance in CPF account of the surplus employees shall be transferred to the absorbing enterprise. On absorption the surplus employees would be governed by CPF Scheme and rules of the absorbing enterprise. A

(b) In an enterprise having pension scheme, the balance in CPF Account of surplus employees would be transferred to absorbing enterprise for credit to the GPF Account of the employees and the Pension Fund in proportion of employees own subscription and organisation's contribution respectively. The eligible period of service rendered in relieving enterprise would be considered as qualifying service under pension scheme of absorbing enterprise." B  
C

31. The petitioner also filed affidavit on 14.08.2020 and has not disputed the correctness of clause 11 as brought on record by the respondent.

32. Both CPF and Pension Schemes are beneficial Schemes for the employees which are of different nature. In a Contributory Provident Fund Scheme Employer makes matching contributions to the Employees contribution and both are kept in separate account and on retirement of employees both are released to the employee along with the interest. The Pension is a periodic payment to the employee after the retirement from the service by the Employer. Payment of Pension is made under scheme floated by Employer. Pension Scheme contemplates a fund out of which the pension is payable to an employee. The payment of pension is dependent on various considerations and conditions. This Court in **Pepsu Road Transport Corporation, Patiala versus Mangal Singh and others, (2011) 11 SCC 702**, while considering Pension Scheme and contributory Provident Fund Scheme under Pepsu Road Transport Corporation Employees' Pension/Gratuity and General Provident Fund Regulations, 1992 made following observations in paragraph 34:- D  
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*"34. Pension is a retirement benefit partaking of the character of regular payment to a person in consideration of the past services rendered by him. We hasten to add that although pension is not a bounty but is claimable as a matter of right, yet the right is not absolute or unconditional. The person claiming pension must establish his entitlement to such pension in law. The entitlement might be dependent upon various considerations or conditions. In a given case, (sic whether) the retired employee is entitled to pension or not depends on* G  
H

A        *the provisions and interpretation of the rules and regulations. The contributory provident fund appears to be a simple mechanism where an employee is paid the total amount which he has contributed along with the equal contribution made by the employer ordinarily at the time of retirement of an employee. In short, we quote what was repeatedly said by*  
B        *this Court that “pension is payable periodically as long as the pensioner is alive whereas CPF is paid only once on retirement.” Therefore, conceptually, pension and CPF are separate and distinct.”*

C        33. Now reverting to the facts of the present case, we need to first consider as to what were the conditions which were to be fulfilled by the respondent for receiving the pension. As noted above, paragraph 11(b) of guidelines dated 02.07.1991 was applicable in the present case with which both the parties are in agreement. It is the case of both the parties that it is clause 11(b) which is applicable in the case of the  
D        respondent.

E        34. Clause 11 begin with the words “in case surplus employees were covered under CPF scheme on absorption;”- in an Enterprise having Pension Scheme, (i) the balance in CPF account of surplus employee will be transferred to absorbing Enterprise for credit of CPF account of the employee, and (ii) the pension fund in proportion of employees’ own subscription and organization’s contribution respectively; (iii) the eligible period of service rendered in relieving Enterprise would be considered as qualifying service under Pension Scheme of absorbing Enterprise.

F        35. The circular dated 02.07.1991 provided for absorption from one State Public Enterprise to another Public Enterprise. All Public Enterprises were not governed by common CPF and Pension Scheme, for example, Rajasthan Agro Industries Corporation Limited did not have a pension scheme for its employees whereas Rajasthan State Road Transport Corporation Ltd. has Pension Scheme. When an employee who is governed by CPF Scheme in his erstwhile employment opts for  
G        CPF Scheme in absorbing Enterprise, the balance amount in CPF account is transferred and the employees continue in CPF Scheme. There can be two categories of surplus employees, one category may have in its erstwhile Employment Pension Scheme and another category may have only CPF Scheme. In a case where in erstwhile employment employee  
H        is governed by Pension Scheme and he opts for Pension Scheme in the

absorbing Enterprise, there is no difficulty in implementing of Pension Scheme since balance in CPF account as well as Pension Fund shall be transferred in corresponding accounts in absorbing Enterprise. A

36. In this context, we refer to Clause 12 of Circular dated 02.07.1991 which is to the following effect:

“(12)In case the surplus employees were covered by pension scheme, on absorption:- B

(a)In an enterprise having pension scheme the relieving enterprise would transfer the balance of GPF Account of the employee and his share in the Pension Fund of the relieving organisation to the absorbing organisation for credit to GPF Account and Pension Fund respectively. C

(b)In an enterprise having CPF Scheme, the balance of GPF Account and share in Pension Fund would be transferred to the absorbing enterprise for credit to the CPF Account. On absorption, the surplus employees would be governed by CPF Scheme and rules of the absorbing enterprise.” D

37. The respondent in his earlier employment was covered by the CPF Scheme and both employee’s contribution as well as employer’s contribution were deposited in the Provident Fund. Alongwith affidavit filed by the respondent in this appeal Certificate of Accounts Transfer, issued by the Regional Provident Fund Commissioner, Jaipur has been brought on record. The total deposit of respondent No.1 with the Regional Provident Fund Commissioner, Jaipur was (a) contribution of employee Rs.92,504/-; (b) contribution of employer Rs.1,01,282/-. Both the above amounts were transferred to the Rajasthan Road State Transport Corporation after the respondent was absorbed in the Rajasthan State Road Transport Corporation. E F

38. The contention which has been pressed by the learned counsel for the appellant before us is that there was no transfer of capital amount of the erstwhile employer of respondent. Learned counsel for the appellant has relied and refer to the letter dated 18.09.1998 issued by the Rajasthan State Agro Industries Corporation Limited. This has been brought on record as Annexure-P/1. A perusal of Annexure-P/1 indicates that Rajasthan State Road Transport Corporation by letter dated 29.07.1998 requested the Rajasthan State Agro Industries Corporation Limited for transferring capital value amount in regard to the respondent. The H



- A erstwhile employer of the respondent informed the appellant that capital value amount in regard to the absorbed employees is not due to the Rajasthan State Road Transport Corporation. The appellant was informed that contribution of Provident Fund amount is deposited in the account of Commissioner, Provident Fund, Government of India which can be got transferred. The question to be answered is as to whether apart from transfer of employee's contribution and employer's contribution deposited in the account of Commissioner, Provident Fund, there is any other amount which required to be transferred to the appellant for the purpose of making the respondent eligible for the benefit of pension.
- B Regulation 43 of the Regulations, 1989 is the provision of transfer of Pension Fund by Corporation. The Regulation makes it clear that except those employees who have opted for continuing to CPF, employer's share shall be transferred to the Rajasthan State Road Transport Corporation Pension Fund and the employees share with interest shall be transferred to Rajasthan State Road Transport Corporation GPF Fund.
- C For the employees who were entitled to grant of pension there is mention of only two Funds that is Pension Fund and GPF Fund. The employer's share was to be transferred to Pension Fund and employee's share shall be transferred to GPF Fund. Clause 11 sub-cause (b) of Circular dated 02.07.1991 also refers to only two accounts i.e. GPF Account and Pension Fund. As per clause 11(b) in an Enterprise having pension scheme, the balance in CPF Account of surplus employees would be transferred to absorbing Enterprise for credit to the GPF Account of the employees and the Pension Fund in proportion of employees own subscription and organisation's contribution respectively. Thus, employee's contribution shall go to the GPF Account and employer's proportion should be credited to the Pension Fund. Clause 11(b) makes it clear that when the respondent was absorbed in Rajasthan State Road Transport Corporation, the balance in CPF Account of the surplus employees would be transferred in GPF Account and the Pension Fund respectively. The certificate issued by the Regional Provident Fund Commissioner which has been filed at Annexure R-8 makes it clear that contribution of employee Rs. 92504/- and contribution of employer Rs.101282/- have been transferred to the Rajasthan State Road Transport Corporation which was the amount credited with Regional Provident Fund Commissioner. The entire amount having been transferred to the Rajasthan State Road Transport Corporation it was the obligation of the Rajasthan State Road Transport Corporation to credit the aforesaid amount in respect of Pension
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Fund and GPF Fund. Neither Regulations, 1989 nor Circular dated 02.07.1991 refers to any capital amount. There was no obligation of erstwhile employer of the respondent to transfer any capital amount. Neither any such capital amount was contemplated by 1989 Regulations or by Scheme of absorption dated 02.07.1991. The Circular dated 02.07.1991 is in conformity with the Regulations, 1989 and a reading of Regulation 43 of Regulations 1989 as well as Circular dated 02.07.1991 makes it abundantly clear that for benefit of Pension Scheme what was required to be transferred by the erstwhile employer was the employees contribution which was to get transferred into the GPF Account and the employer's contribution to be credited in the Pension Fund. Nothing more was required to be done by the respondent or erstwhile employer for fulfilling any condition or statutory requirement with regard to the respondent's claim of pension. After transfer of the amount aforesaid, the respondent having given option regarding opting the pension scheme, it was statutory obligation of the appellant to credit both the aforesaid amounts and thereafter continues to deposit 10% in the Pension Fund and after retirement calculates the pension accordingly.

39. The notification dated 12.02.1997 specially Clause 2(vi) on which reliance has been placed by the learned counsel for the appellant also does not refer to any sum as a capital amount which needs to be transferred to the appellant for making employee eligible for Pension. The circular dated 09.02.1999 filed by the appellant as Annexure-P/2 does refer to capital amount but it relies on notification dated 12.02.1997 specifically on Clause 2(vi). Clause 2(vi) of notification dated 12.02.1997 does not refer to any capital amount. Thus, the statement in Circular dated 09.02.1999 that only upon receipt of capital amount from Rajasthan State Agro Industries Corporation Limited employees were entitled to get benefit of Corporation Pension is unfounded and without any basis. Clause 2(vi) contemplates that those employees who give their option under Employee Pension Scheme, 1989 their deducted Provident Fund Contribution amount of earlier service on receiving back from P.F. Commissioner Office by their employer will be forwarded to Corporation. We have already noticed that both employee's contribution and employer's contribution which were deposited with Provident Fund Commissioner Office was transferred to Corporation. Thus, what was contemplated by Clause 2(vi) of notification dated 12.02.1997 was complied with.

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A           40. We are satisfied that there was no justifiable ground for the appellant for not sanctioning the claim of pension of the respondent after his retirement.

B           41. Learned counsel for the appellant has emphasized that the respondent continued to receive pension under the CPF Scheme which fact has not been denied by the respondent. The respondent's case was that the said amount was accepted by the respondent since he had no option his pension having not been sanctioned by the appellant. We are of view that it was open for the Corporation-appellant while sanctioning the pension to the respondent to deduct the amount of pension received by him under CPF Scheme and the pension could have been accordingly  
C           fixed by reducing the pension amount already received by the respondent which respondent was getting under CPF Scheme but that could not have been a reason for denying pension to the respondent. The payment of gratuity to the respondent was also made of Rs. 10 lakh which was paid in the account of the respondent.

D           42. Learned Single Judge allowing the writ petition filed by the respondent for grant of pension has put a condition that said entitlement is subject to refund of the amount received by him under the CPF Scheme. Learned Single Judge has also rightly directed that neither the appellant nor the respondent shall be entitled for any interest meaning thereby that  
E           whatever amount was received by the respondent he was to refund it without any interest accrued on it and whatsoever amount was to be received by the respondent under his entitlement to pension he was not to receive any interest. It is useful to refer to direction of the learned Single Judge contained in paragraph 5 which is to the following effect:

F           “5. In the circumstances, the writ petition is allowed. It is directed that the petitioner shall be treated to be entitled to get pension. However, the same would be subject to his returning/ refunding the amount received by him under the CPF Scheme. In view of the aforesaid direction, neither the petitioner nor the respondents would be entitled to any interest. The exercise may be conducted  
G           by the respondents within fifteen days of the amount of CPF is refunded/returned to them.”

H           43. Counsel for the respondent has placed reliance on the judgment of Rajasthan High Court in the writ petition of Mahaveer Prasad Jain. The Division Bench judgment of Rajasthan High Court in D.B. Special

Appeal(writ) No.1326 of 2007 decided on 19.12.2007 in **Jaipur Vidhyut Vitran Nigam Ltd. through its Chairman and Anr. versus Mahaveer Prasad Jain**, reported in **2008 (2) WLN 337**, need to be noticed in some detail. A

44. In the above case decided by the Division Bench the surplus employee was an employee of Rajasthan State Agro Industries Corporation Limited who was absorbed in Jaipur Vidhyut Vitran Nigam. The case of pension of the employee was allowed by the learned Single Judge against which Special Appeal was filed against the judgment of Learned Single Judge. The appellant accepted that respondent would be governed by the pension scheme and his case is covered by clause 11(b) of Circular dated 02.07.1991. The Division Bench has held that employee being not covered by Pension Scheme in his earlier employment, his case is governed by clause 11 of Circular dated 02.07.1991. In paragraph 6 Rajasthan High court made the following observation: B C

“6. We now advert to the second contention. The counsel for the appellant informed us that the Rajasthan State Electricity Board (as it then was) had both the Central Provident Fund Scheme as well as Pension Scheme for its employees. According to the counsel the employees of the Board were given option to either opt for CPF Scheme or Pension Scheme. On the absorption of the original petitioner (respondent No. 1 herein), his CPF Account was closed and instead GPF Account was opened by the Board on 02.08.2001. Moreover he was asked to deposit employee’s share of CPF amount which he did. A perusal of the paragraph 13 of the guidelines would show that it is in two parts. Clause (a) thereof applies where the employee was covered under CPF Scheme and absorbing enterprise also has CPF Scheme. Clause (a) provides that the balance in the CPF Account of surplus employee shall be transferred to the absorbing enterprise and on absorption the surplus employee would be governed by the CPF Scheme and the rules of absorbing enterprise while Clause (b) of Para 11 provides that where the absorbing enterprise is having CPF Scheme, the balance in the CPF account of the surplus employees shall be transferred to the absorbing enterprise for credit to the CPF Account of the employees and the Pension Fund in proportion of employees and the pension fund in proportion of the employees subscription and organisation’s contribution D E F G H

A           respectively. It further provides that the eligible period of service rendered in relieving enterprise would be considered as qualifying service under pension scheme of absorbing enterprise. In view of the admitted fact that the CPF account of the present respondent was closed after he was absorbed in the RSEB and that he was called upon to deposit employees' share of CPF amount which he did, it is apparent that the present appellants accepted that the respondent would be governed by the pension scheme and that his case is covered by Clause 11(b). In this view of the matter, the rejection of the petitioner's claim for pension was not legally proper. Merely because the respondent No. 1 had withdrawn the entire CPF amount prior to his absorption would not make any difference because the CPF account was closed by the Board on the employee's absorption."

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45. In the above case also the balance of C.P.F. amount was deposited in absorbing organization even though in the said case the employee has withdrawn the entire C.P.F. amount prior to his absorption in the subsequent employment. In the present case the respondent has not withdrawn any amount and both the employees and employer contributions were transferred to the Rajasthan State Road Transport Corporation by Regional Provident Fund Commissioner. Against the judgment of the Division Bench of the Rajasthan High Court dated 19.12.2007, Special Leave Petition (C)No.10904 of 2008 was also filed by Jaipur Vidyut Vitran Nigam Ltd. which was dismissed by this Court on 09.05.2008.

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46. In view of the foregoing discussion, we are of the considered opinion that respondent had made out a case for grant of pension by the appellant and both the learned Single Judge and the Division Bench did not commit any error in allowing the claim of the respondent for pension.

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47. The direction of learned Single Judge in paragraph 5 as stated above amply protected the interest of the appellant.

48. We may also notice that the respondent, who attained the age of superannuation on 31.10.2012, immediately filed the writ petition in the year 2012 itself being Writ Petition No.8847 of 2012 which writ petition was entertained and direction was issued by the learned Single Judge. No delay was caused by the respondent in approaching the High Court for relief of Pension. Before filing the writ petition the respondent

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has also sent representation in the year 2010 raising his claim for Pension which ought to have alerted the appellant to take appropriate steps. A

49. There being an interim order passed by this Court on 13.08.2018 in this appeal, the impugned judgment of the High Court could not be given effect by the appellant. Learned Single Judge while allowing the writ petition of the respondent although directed the appellant to return the benefit received by him under the CPF Scheme but had not fixed any time for deposit. In ends of justice we allow a period of two months from this order to the respondent to refund the entire amount under the C.P.F. Scheme including excess gratuity. On such deposit being made by the respondent, the Rajasthan State Road Transport Corporation shall sanction the pension to the respondent and take steps regarding payment of pension but without any interest thereon. B C

50. But looking to the facts of the present cases, to balance equities between the parties ends of justice be served in directing the Corporation to pay pension to the respondents only with effect from the date on which deposit is made by respondents. The pension received by respondents under CPF Scheme shall be allowed to be retained by the respondents. This means that the amount received as pension under the CPF need not be given back by the respondents and the same shall not be deducted when the pension is computed and paid by the appellant to the respondents. Subject to above modifications in the impugned judgment of the High Court, we dismiss both the appeals. D E

A

UMESH KUMAR SHARMA

v.

STATE OF UTTARAKHAND & ORS.

(Transfer Petition (Criminal) Nos. 534-536 of 2019)

B

OCTOBER 16, 2020

[HRISHIKESH ROY, J.]

C *Code of Criminal Procedure, 1973 – s. 406 – Supreme Court Rules – Or. XXXIX – Transfer Petitions – Petitioner sought transfer of three criminal cases pending before different Courts in Dehradun to competent courts in Delhi or some other courts outside the State of Uttarakhand – The petitioner apprehended threat to his life – The basic premise for such apprehension was that on account of his work as an investigative journalist against the Ruling dispensation, the State was targeting the petitioner for vindictive*

D *prosecution – Held: It is established law that the transfer power u/s. 406 of the Code is to be invoked sparingly – Only when fair justice is in peril, a plea for transfer might be considered – The Court, however, will have to be fully satisfied that impartial trial is not possible – Equally important is to verify that the apprehension*

E *of not getting a level playing field, is based on some credible material and not just conjectures and surmises – Further, while considering a plea for transfer, the convenience of parties would be a relevant consideration – In the instant case, the petitioner failed to demonstrate that because of what he endured, it is not possible for the Courts in the State to dispense justice objectively and without*

F *any bias – The petitioner was involved in several cases in the State of Uttarakhand and it is difficult to accept that justice for the petitioner can only be ensured by transfer of three cases mentioned in the petitions – When relative convenience and difficulties of all the parties involved in the process are taken into account, the petitioner*

G *has again failed to make out a credible case for transfer of trial to alternative venues outside the State – Further, when the nature of three cases are examined, it is seen that two of the cases are property and Will related matters – One of this case is pending for last over a decade – Therefore, this Court finds it difficult to accept that the cases are on account of journalistic activities of the petitioner – In*

H *fact credibility of the journalistic activity of the petitioner is itself*

*questioned, by a member of his sting operation team, in the third case – In such circumstances, the prosecution in the concerned three cases can't prima facie be said to be on account of malicious prosecution.*

**Dismissing the transfer petitions, the Court**

**HELD:1.** The legal enunciations make it amply clear that transfer power under section 406 of the Code is to be invoked sparingly. Only when fair justice is in peril, a plea for transfer might be considered. The court however will have to be fully satisfied that impartial trial is not possible. Equally important is to verify that the apprehension of not getting a level playing field, is based on some credible material and not just conjectures and surmises. [Para 20][270-G; 271-A]

**2.** While assurance of a fair trial needs to be respected, the plea for transfer of case should not be entertained on mere apprehension of a hyper sensitive person. In his pleadings and arguments, the petitioner in my assessment has failed to demonstrate that because of what he endured in 2018, it is not possible for the courts in the state to dispense justice objectively and without any bias. It can't also be overlooked that the petitioner is involved in several cases and this year itself has generated few on his own in the state of Uttarakhand. Therefore, it is difficult to accept that justice for the petitioner can only be ensured by transfer of three cases mentioned in these petitions. [Para 21][271-B-C]

**3.** While considering a plea for transfer, the convenience of parties would be a relevant consideration. It can't just be the convenience of the petitioner but also of the Complainant, the Witnesses, the Prosecution besides the larger issue of trial being conducted under the jurisdictional Court. When relative convenience and difficulties of all the parties involved in the process are taken into account, it is clear that the petitioner has failed to make out a credible case for transfer of trial to alternative venues outside the State. [Para 22][271-C-D]

**4.** When the nature of the three cases are examined, it is seen that two of the cases are property and Will related matters. One of this case is pending for last over a decade. Therefore,



A **this court finds it difficult to accept that the cases are on account of journalistic activities of the petitioner. In fact the credibility of the journalistic activity of the petitioner is itself questioned, by a member of his sting operation team, in the third case. In such circumstances, the prosecution in the concerned three cases can't**

B **prima facie be said to be on account of malicious prosecution. [Para 24][271-F-H]**

*Sidhartha Vashisht v. State (NCT of Delhi)* (2010) 6 SCC

1 : [2010] 4 SCR 103; *Maneka Sanjay Gandhi v. Rani*

*Jethmalani* (1979) 4 SCC 167 : [1979] 2 SCR 378;

C *Abdul Nazar Madan v. State of T.N. & Anr.* (2000) 6

SCC 204 : [2000] 3 SCR 1028; *R. Balakrishna Pillai*

*v. State of Kerala* (2000) 7 SCC 129 : [2000] 3 Suppl.

SCR 26; *Captain Amrinder Singh v. Prakash Singh*

*Badal & Ors.* (2009) 6 SCC 260 : [2009] 9 SCR 194;

*Nahar Singh Yadav & Others v. Union of India & Ors.*

D (2011) 1 SCC 307 : [2010] 13 SCR 851; *Harita Sunil*

*Parab v. State (NCT of Delhi) & Ors.* (2018) 6 SCC

358 : [2018] 3 SCR 732 – relied on.

#### Case Law Reference

E	[2010] 4 SCR 103	relied on	Para 13
	[1979] 2 SCR 378	relied on	Para 14
	[2000] 3 SCR 1028	relied on	Para 15
	[2000] 3 Suppl. SCR 26	relied on	Para 16
F	[2009] 9 SCR 194	relied on	Para 17
	[2010] 13 SCR 851	relied on	Para 18
	[2018] 3 SCR 732	relied on	Para 19

CRIMINAL ORIGINAL JURISDICTION: Transfer Petition (Criminal) Nos.534-536 of 2019.

G Petitions filed u/s.406 of the CrPC, 1973 read with Order XXXIX for Transfer of Case No. 207 of 2007, Case Crime No. 2208 of 2019 and Case Crime No. 3588 of 2019.

H Kapil Sibal, Anupam Lal Das, Sr. Advs, Arunabh Chowdhury, Ankur Chawla, Adit Subramanian Poojary, Jayant Mohan, Ms. Ruchira

Gupta, Kuldeep Parihar, Jaswant Singh Rawat, Vikas Singh Negi, A  
Ms. Ikshita Parihar. Ms. Pallavi Langar, Anirudh, R. K. Mohit Gupta,  
Arvind Kumar Shukla, Ms. Reetu Sharma, Nihal Ahmad, Ms. Neena  
Shukla, Advs. for the appearing parties.

The Judgment of the Court was delivered by

**HRISHIKESH ROY, J.**

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1. The present petitions are filed under Section 406 of the  
Code of Criminal Procedure, 1973 (for short “the CrPC”) read with  
Order XXXIX of the Supreme Court Rules seeking transfer of three  
criminal cases pending before different courts in Dehradun to competent  
courts in Delhi by or some other courts outside the State of Uttarakhand.

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2. Mr. Kapil Sibal, the learned Senior Counsel submits that the  
petitioner apprehends threat to his life and will be prejudiced in conducting  
his defense in the courts at Dehradun. The basic premise for such  
apprehension is that on account of his work as an investigative journalist  
against the Ruling dispensation, the State is targeting the petitioner for  
vindictive prosecution. It is pointed out that as a journalist the petitioner  
has conducted sting operations against the Chief Minister, his relatives  
and associates in the State of Uttarakhand and therefore he is being  
targeted for malicious prosecution within the State. Moreover, besides  
the three cases for which transfer is sought, many false cases are foisted  
against the petitioner. As such, the petitioner has a genuine and justifiable  
apprehension that justice will not be done if the trials are conducted in  
the courts within the State of Uttarakhand. Therefore, those cases be  
transferred either to the courts in Delhi or to any other competent courts,  
out of Uttarakhand.

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3. Representing the State of Uttarakhand, Ms. Ruchira Gupta,  
the learned counsel however submits that the petitioner has failed to  
demonstrate how and in what manner, he will be prejudiced if the trials  
continue in the courts at Dehradun. According to her, the effort of the  
petitioner is filed only to delay the proceedings. Since investigation in all  
three cases are concluded and charge sheet has been filed, the  
apprehension of interference in the cases by the State administration is  
contended to be wholly unfounded. The government counsel then refers  
to the large number of witnesses in the cases to point out that all of them  
are residents of the State of Uttarakhand and therefore it will be wholly  
irrational to transfer the trials only on the basis of unsubstantiated

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- A apprehension by the accused. Rebutting the contention that the petitioner's life is endangered within the State of Uttarakhand, Ms Ruchira Gupta, the learned government counsel submits that these petitions are confined to only three cases whereas the petitioner is accused in several other cases pending in the State. Moreover, he has himself filed five PILs in the year 2020 itself in the High Court of Uttarakhand and this demonstrates
- B that the petitioner is conducting his affairs without any impediment. The government advocate then submits that the transfer of criminal cases should be rare and exception since it impacts the credibility of the Courts in Uttarakhand. Ms. Gupta submits that some of the criminal cases against the petitioner have been closed and the charges of extortion have been
- C dropped. This according to the learned government counsel would clearly demonstrate the unbiased approach of the State Government and the incorrect and bald allegation made by the petitioner.

4. Representing the Complainant (Ayush Gaur) in the FIR No.100/2018, Mr. Arvind Kumar Shukla, learned counsel points out that his client
- D during his service with the petitioner learned that the petitioner is using the cover of journalism to grab property inasmuch as none of the so-called sting operations carried out by the petitioner has led to prosecution of anyone in the State of Uttarakhand. The counsel submits that in most of the 29 cases pending against the petitioner, the primary charge is grabbing of property, and accordingly, the counsel argues that the
- E petitioner has put forth a non-bonafide plea, in order to delay the trial against him.

5. Insofar as the FIR No. 100/2018 is concerned, the Complainant's lawyer points out that although the so called investigation and sting operations were carried out, the petitioner never had any intention of
- F actually exposing corruption in high places. The sting operations commenced in January 2018, but there was no attempt made by the petitioner to telecast the video recordings and only then Complainant realized that the video footage collected with secret camera will be used by the petitioner to blackmail people. That is why on 10.08.2018, the
- G Complainant who was one of the team members under the accused, was constrained to file the FIR to expose the nefarious design of the petitioner. The counsel then argues that the petitioner has failed to indicate as to how the trial would be prejudiced if they are to be conducted in the courts at Dehradun.

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6. Mr. Anupam Lal Das, the learned Counsel appearing for the co-accused in the FIR No.100/2018, however, joins the petitioner in seeking transfer of the said criminal case from the Courts in Uttarakhand. A

7. Before proceeding any further, it would be appropriate to refer to the list of cases pending against the petitioner. Out of those cases, 17 cases relate to the State of Uttarakhand, 4 cases are from the State of Uttar Pradesh, 5 cases relate to the State of West Bengal, 2 cases are from Delhi out of which one is under investigation of the CBI, and another one at Ranchi, Jharkhand. B

8. Whether those cases are without merit or otherwise, can be determined only through trial. However, the numbers do suggest that the petitioner is not an ordinary person. It is also important to note that the State has withdrawn prosecution in many cases filed against the petitioner. C

9. We also notice that one of the FIR that is being sought to be transferred i.e. FIR No.16/2007 was filed long back in 2007, when the present ruling dispensation in the State of Uttarakhand, was nowhere in picture. The contents of the allegations in the FIR No.16/2007 (registered on 9.2.2007) relates to a property dispute involving the Will (dated 20.1.1995), of a family member of the petitioner. D

10. The next FIR No.128/2018 (registered on 01.11.2018) relates to forcible land grabbing attempts, on the basis of purportedly fake of documents. E

11. Perhaps only the FIR 100/2018 (dated 10.08.2018) is relatable to journalistic activity where the allegation of a core member of the investigative journalism team is that the petitioner in the guise of sting operation (by video recording activities of powerful elements), does not air them and the concerned footages are utilized for extraneous purposes. F

12. Let us now examine the arguments of the petitioner's counsel about the petitioner being targeted for malicious prosecution. To demonstrate this aspect the learned senior counsel refers to the proactive steps taken by the public prosecutor to arrest the petitioner by repeatedly approaching the magistrate and then the High Court. Whether the public prosecutor followed the legal process or it was a case of overenthusiasm is an issue, which may not be very relevant for the purpose of these transfer petitions. This is because the incident happened nearly two years back when the FIR 100/2018 was first registered. More importantly the charge sheet is already filed and the case is G H

- A scheduled to go for trial in the Dehradun Court. Therefore, the role of the State will now be limited to prove the prosecution case before the Trial Court. In such Court controlled proceeding, the prosecution will have to marshal their evidence which is to be evaluated by the Presiding Officer of the concerned Court. Therefore, the apprehension of malicious prosecution because of the steps taken by the public prosecutor against the petitioner in 2018, is not acceptable. I may also add that our courts are capable of deciding cases on the merits of the evidence.

13. On the above aspect the following ratio will have a bearing. In *Sidhartha Vashisht vs. State (NCT of Delhi)*<sup>1</sup>, Justice P. Sathasivam, as he then was, while writing for the Division Bench discussed the role of public prosecutor and conducting of investigation and his observations in the present case, will be apposite.

- “187. Therefore, a Public Prosecutor has wider set of duties than to merely ensure that the accused is punished, the duties of ensuring fair play in the proceedings, all relevant facts are brought before the court in order for the determination of truth and justice for all the parties including the victims. It must be noted that these duties do not allow the Prosecutor to be lax in any of his duties as against the accused.....

- 198.....The law in relation to investigation of offences and rights of an accused, in our country, has developed with the passage of time. On the one hand, power is vested in the investigating officer to conduct the investigation freely and transparently. Even the courts do not normally have the right to interfere with the investigation. It exclusively falls in the domain of the investigating agency. In exceptional cases the High Courts have monitored the investigation but again within a very limited scope. There, on the other a duty is cast upon the Prosecutor to ensure that rights of an accused are not infringed and he gets a fair chance to put forward his defence so as to ensure that a guilty does not go scot-free while an innocent is not punished. Even in the might of the State the rights of an accused cannot be undermined, he must be tried in consonance with the provisions of the constitutional mandate. The cumulative effect of this constitutional philosophy is that both the courts and the investigating

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H <sup>1</sup> (2010) 6 SCC 1

agency should operate in their own independent fields while ensuring adherence to basic rule of law.” A

14. In *Maneka Sanjay Gandhi vs. Rani Jethmalani*<sup>2</sup>, for the three Judge Bench, Justice V.R. Krishna Iyer enunciated the law on transfer under Section 406 CrPC with the following observation: -

“2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner’s grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate when the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.” B C D

3. One of the common circumstances alleged in applications for transfer is the avoidance of substantial prejudice to a party or witnesses on account of logistics or like factors, especially when an alternative venue will not seriously handicap the complainant and will mitigate the serious difficulties of the accused. In the present case the petitioner claims that both the parties reside in Delhi and some formal witnesses belong to Delhi; but the meat of the matter, in a case of defamation is something different. The main witnesses are those who speak to having read the offending matter and other relevant circumstances flowing therefrom. They belong to Bombay in this case and the suggestion of the petitioner’s counsel that Delhi readers may be substitute witnesses and the complainant may content herself with examining such persons is too presumptuous for serious consideration.” E F G

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<sup>2</sup> (1979) 4 SCC 167

A        15. In *Abdul Nazar Madan vs. State of T.N. & Anr.*<sup>3</sup>, Justice R.P. Sethi speaking for the Division Bench discussed the scope of power under Section 406 CrPC and observed:-

B                “7. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 CrPC. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. If it appears  
C                that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding  
D                a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of  
E                apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society.”

F        16. In *R. Balakrishna Pillai vs. State of Kerala*<sup>4</sup>, Justice M.B. Shah in another case for transfer under Section 406 CrPC, made the following pertinent observation:-

G                “9. .... we would further state that in this country there is complete separation of the judiciary from the executive and Judges are not influenced in any manner either by the propaganda or adverse publicity. Cases are decided on the basis of the evidence available on record and the law applicable. Granting such application and transferring the appeal from the High Court of Kerala to the High Court of Karnataka would result in casting unjustified aspersion on the Court having jurisdiction to decide the

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<sup>3</sup> (2000) 6 SCC 204

H    <sup>4</sup> (2000) 7 SCC 129

appeal on the assumption that its judicial verdict is consciously or subconsciously affected by the popular frenzy, official wrath or adverse publicity, which is not the position qua the judicial administration in this country. We would also mention that at the time of hearing the learned counsel has not raised this contention.

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17. In *Captain Amrinder Singh Vs. Prakash Singh Badal & Ors.*<sup>5</sup>, Justice P. Sathasivam, as he then was, speaking for the three judge Bench, on the issue of transfer of criminal cases, observed as follows: -

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“48. The analysis of all the materials, the transfer of the case as sought for, at this stage, is not only against the interest of prosecution but also against the interest of the other accused persons, the prosecution witnesses and the convenience of all concerned in the matter.

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51. We have already pointed out that a mere allegation that there is an apprehension that justice will not be done in a given case alone does not suffice. Considering the totality of all the circumstances, we are of the opinion that in a secular, democratic Government, governed by the rule of law, the State of Punjab is responsible for ensuring free, fair and impartial trial to the accused, notwithstanding the nature of the accusations made against them. In the case on hand, the apprehension entertained by the petitioners cannot be construed as reasonable one and the case cannot be transferred on a mere allegation that there is apprehension that justice will not be done.”

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18. Let us now examine another precedent on transfer of criminal cases. In *Nahar Singh Yadav & Others vs. Union of India & Ors.*<sup>6</sup>, Justice D.K. Jain writing for the three Judge Bench discussed the scope of transfer under Section 406 CrPC in the following terms: -

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“22. It is, however, the trite law that power under Section 406 CrPC has to be construed strictly and is to be exercised sparingly and with great circumspection. It needs little emphasis that a prayer

<sup>5</sup> (2009) 6 SCC 260

<sup>6</sup> (2011) 1 SCC 307

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- A for transfer should be allowed only when there is a well-substantiated apprehension that justice will not be dispensed impartially, objectively and without any bias. In the absence of any material demonstrating such apprehension, this Court will not entertain application for transfer of a trial, as any transfer of trial from one State to another implicitly reflects upon the credibility of
- B not only the entire State judiciary but also the prosecuting agency, which would include the Public Prosecutors as well.”

19. On the same line is the decision in *Harita Sunil Parab vs. State (NCT of Delhi) & ors*<sup>7</sup>, where Justice Navin Sinha, enunciated the law on transfer jurisdiction in the following terms:-

- C “8. The apprehension of not getting a fair and impartial enquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. No universal or hard-and-fast rule can be prescribed for deciding a transfer petition, which will always have to be decided on the facts of each case. Convenience of a
- D party may be one of the relevant considerations but cannot override all other considerations such as the availability of witnesses exclusively at the original place, making it virtually impossible to continue with the trial at the place of transfer, and progress of which would naturally be impeded for that reason at the transferred
- E place of trial. The convenience of the parties does not mean the convenience of the petitioner alone who approaches the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society. The charge-sheet in FIR No. 351 of 2016 reveals that of the 40
- F witnesses, the petitioner alone is from Mumbai, two are from Ghaziabad, and one is from Noida. The charge-sheet of FIR No. 1742 of 2016 is not on record. A reasonable presumption can be drawn that the position would be similar in the same also.”

- G 20. The above legal enunciations make it amply clear that transfer power under Section 406 of the Code is to be invoked sparingly. Only when fair justice is in peril, a plea for transfer might be considered. The court however will have to be fully satisfied that impartial trial is not possible. Equally important is to verify that the apprehension of not getting

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H <sup>7</sup> (2018) 6 SCC 358

a level playing field, is based on some credible material and not just conjectures and surmises. A

21. While assurance of a fair trial needs to be respected, the plea for transfer of case should not be entertained on mere apprehension of a hyper sensitive person. In his pleadings and arguments, the petitioner in my assessment has failed to demonstrate that because of what he endured in 2018, it is not possible for the courts in the state to dispense justice objectively and without any bias. It can't also be overlooked that the petitioner is involved in several cases and this year itself has generated few on his own in the state of Uttarakhand. Therefore, it is difficult to accept that justice for the petitioner can only be ensured by transfer of three cases mentioned in these petitions. B C

22. While considering a plea for transfer, the convenience of parties would be a relevant consideration. It can't just be the convenience of the petitioner but also of the Complainant, the Witnesses, the Prosecution besides the larger issue of trial being conducted under the jurisdictional Court. When relative convenience and difficulties of all the parties involved in the process are taken into account, it is clear that the petitioner has failed to make out a credible case for transfer of trial to alternative venues outside the State. D

23. The learned senior counsel for the petitioner made it clear that the petitioner is not pointing any fingers towards the courts and his apprehension is based only on the action taken by the State. The transfer of trials from one state to another would inevitably reflect on the credibility of the State's judiciary and but for compelling factors and clear situation of deprivation of fair justice, the transfer power should not be invoked. This case is not perceived to be one of those exceptional categories. E F

24. When the nature of the three cases are examined, it is seen that two of the cases are property and Will related matters. One of this case is pending for last over a decade. Therefore, this court finds it difficult to accept that the cases are on account of journalistic activities of the petitioner. In fact the credibility of the journalistic activity of the petitioner is itself questioned, by a member of his sting operation team, in the third case. In such circumstances, the prosecution in the concerned three cases can't prima facie be said to be on account of malicious prosecution. G

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A            25. In view of the forgoing, these Transfer Petitions are dismissed. However, it is made clear that the observations in this judgment is only for disposal of these petitions and should have no bearing for any other purpose.

Ankit Gyan

Transfer petitions dismissed.