

# **Pepsu Road Transport Corp., Patiala vs Mangal Singh & Ors on 12 May, 2011**

**Equivalent citations: AIR 2011 SUPREME COURT 1974, 2011 (11) SCC 702, 2011 AIR SCW 3197, 2011 LAB. I. C. 2564, (2011) 6 SCALE 53, (2011) 2 CURLR 429, (2011) 129 FACLR 1101, (2011) 5 MAD LJ 819, (2011) 4 ALLMR 925 (SC), (2011) 3 ESC 472, (2011) 2 SERVLJ 445, 2011 (8) ADJ 34 NOC**

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**Bench: H. L. Dattu, D. K. Jain**

REP

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4111 OF 2008

Pepsu Road Transport Corporation, Patiala

..... Appellant

versus

Mangal Singh & Ors.

.....

WITH

CIVIL APPEAL NO.4405 OF 2011

(Arising out of SLP (Civil) No. 3349 of 2008)

PEPSU Road Transport Corporation and Another

.....Appellants

versus

Sharanjit Kaur (Dead) Through L.Rs.

.....Responde

WITH

CIVIL APPEAL NO.4404 OF 2011

(Arising out of SLP (Civil) No. 330 of 2008)

PEPSU Road Transport Corporation and Another

....Appellants

versus

Baldev Singh & Ors.

...Resp

WITH

CIVIL APPEAL NO. 3846 OF 2010

PEPSU Road Transport Corporation and Another

....Appell

versus

Jagroop Singh

J U D G M E N T

H.L. Dattu, J.

1) Leave granted in SLP (C) No. 3349 of 2008 and SLP (C) 330 of 2008.

2) In Civil Appeal No. 4111 of 2008 - PEPSU Road Transport Corporation and Another v. Mangal Singh & Ors. (hereinafter referred to as "Mangal's appeal"), respondent joined the services of the Pepsu Road Transport Corporation (hereinafter referred to as "Corporation") as driver on 07.11.1974 and his services were governed by service rules of the Corporation which included the eligibility to receive Contributory Provident Fund (for short, "C.P.F.") and gratuity. Subsequently, on 30.06.1982, the services of the respondent were terminated for his unauthorized absence from the duty. The respondent raised an industrial dispute against his termination order, which was dismissed by the Labour Court vide its order dated 11.02.1994. Aggrieved by the aforesaid order of the Labour Court, respondent filed a writ petition before the High Court of Punjab and Haryana, which was allowed vide order dated 10.04.1996, setting aside the order of termination. The High Court further directed the reinstatement of the respondent with effect from 18.06.1996. In the meantime, on 15.06.1992, the Corporation had introduced the Pension Scheme for its employees and also framed Regulations known as Pepsu Road Transport Corporation Employees Pension/Gratuity and General Provident Fund Regulations 1992 ('Regulations' for short) in order to regulate the said scheme. The Pension Scheme in terms of Regulation 4 of the Regulations envisages the condition of exercise of the option within a period of six months from the date of issue of the Regulations by an employee in order to avail the pensionary benefits under the scheme. This time was further extended till 15.12.1992. The Regulation 4 of the said Regulations entitles the employee re-joining after leave or suspension to exercise his option for Pension Scheme within the period of 6 months from the date of his re-joining. The respondent had also submitted nomination form of the C.P.F. scheme. However, the respondent did not receive any retiral benefits on his retirement after attaining the age of superannuation due to pendency of litigation in the High Court regarding the payment of his back wages for the period of his absence from the service. It is not in dispute that respondent did not opt for the Pension Scheme till the date of his retirement. On 09.03.2005, the respondent filed a writ petition before the High Court for a direction to the Corporation to sanction pensionary benefits to the respondent under the pension scheme. The High Court has allowed the writ petition vide its order dated 19.01.2007 on the ground that the provisions of Regulation 4 do not cover the case of the persons reinstated into service pursuant to the orders of

the Court. The High Court further directed the Corporation to allow the respondent to exercise his option for pension scheme within six months from the date of the order and the formalities for payment of pension be finalized within a particular time frame. Being aggrieved, the Corporation has filed this appeal.

3) In SLP (Civil) No. 3349 of 2008- PEPSU Road Transport Corporation and Another v. Sharanjit Kaur, widow of Bachittar Singh and Ors. (hereinafter referred to as Bachittar's appeal):

The respondent had joined the services of the Corporation as a Conductor on 07.07.1962. He was subscriber for C.P.F. and gratuity. In the year 1989, respondent took the loan from his C.P.F. account to the tune of `26,000/-. Subsequently, on 15.06.1992, the Corporation had introduced the Pension Scheme for its employees along with the Regulations to regulate the said scheme. The Pension Scheme in terms of Regulation 3 (h) of the Regulations envisaged the condition of refund of the loan taken from the C.P.F. account by an employee on or before 14.12.1992 in order to avail the pensionary benefits under the said Regulations. The respondent had applied for the pension scheme but failed to return the said loan amount. The respondent retired as Inspector on 28.02.1997. He had received all the monetary benefits including a sum of Rs. 99,005/- under C.P.F. Scheme. However, the respondent filed a writ petition before the High Court praying for pensionary benefits due to him under the pension scheme.

The High Court (Civil Writ Petition No. 10285 of 1998) vide its order dated 09.08.2007 has allowed the appeal following its earlier decision in RSA No. 2173 of 1994, dated 25.05.2004 titled as 'PEPSU Road Transport Corporation v. Sant Ram Fitter', wherein, the High Court has observed that the rejection of the claim of respondent by the Corporation was illegal and arbitrary as the amount of advance can be adjusted against Death-cum-Retirement Gratuity payable to employee on his retirement as per Regulation 24 (3) of the Regulations and it can even be deducted from the C.P.F. of the respondent. In the light of this, the High Court has further directed the Corporation to release pensionary benefits to the respondent with interest @6% per annum from the date of accrual of pension till the date of payment thereof within two months from the date of the order.

4) In SLP (Civil) No. 330 of 2008- PEPSU Road Transport Corporation and Another v. Baldev Singh & Ors. (hereinafter referred to as "Baldev's appeal): The respondent joined the services of the Corporation as a driver on 13.10.1966 and had subscribed to C.P.F. and gratuity. In the year 1986, respondent took loan from his C.P.F. account to the tune of `12,000. Subsequently, on 15.06.1992, the Corporation had introduced the Pension Scheme for its employees along with the Regulations in order to regulate the said scheme. The Pension Scheme in terms of Regulation 3 (h) of the Regulations envisaged the condition of refund of the loan taken from the C.P.F. account by an employee on or before 14.12.1992 in order to avail the pensionary benefits under the said scheme. The respondent had applied for the pension scheme but failed to return the said loan amount. Eventually, the respondent retired as a driver on 30.09.1994 and has received an amount of `80,575/- under C.P.F. Scheme as retiral benefits. However, the respondent filed a writ petition before the High Court of Punjab and Haryana inter-alia praying for pensionary benefits due to him

under the pension scheme. The High Court vide its ex- parte order dated 11.8.1997, directed the Corporation to pay all retrial benefits to the respondent within 2 months with interest. Aggrieved by this, the Corporation filed a review petition, which was allowed by the High Court vide its order dated 22.05.1998, directing the Corporation to determine whether any amount is due to the respondent by passing a speaking order. In compliance with the above order of the High Court, the Managing Director of the Corporation, after giving the opportunity of hearing, passed a detailed order rejecting the claim of the respondent. Being aggrieved by the said order dated 18.08.1998, the respondent filed a writ petition before the High Court. The High Court has allowed the writ petition vide its order dated 09.08.2007 following its earlier Judgment in Civil Writ Petition No. 10285 of 1998 (Bachhitar Singh v. PEPSU Road Transport Corporation).

5) In Civil Appeal No. 3846 of 2010- PEPSU Road Transport Corporation and Another v. Jagroop Singh (hereinafter referred to as "Jagroop's appeal"), the respondent had served the Corporation as a driver and was subscriber of C.P.F. and gratuity. Subsequently, on 15.06.1992, the Corporation introduced the Pension Scheme for its employees and also made the Regulations in order to regulate the said scheme. The Pension Scheme in terms of Regulation 4 of the Regulations envisages the condition for exercise of the option on or before 15.12.1992, by an employee in order to avail the pensionary benefits under the scheme. Subsequently, the Corporation had also extended this period by three months. It is not in dispute that the respondent had not exercised any option for availing the benefits under the pension scheme. On 30.11.2000, the respondent took pre-mature voluntary retirement. On 08.06.2001, the respondent received all the retrial benefits under the C.P.F Scheme and gratuity without any objection or protest. However, 01.06.2002, after nearly 10years from his retirement, the respondent filed a suit for declaration for the entitlement to pension and other benefits in the Court of Civil Judge Senior Division, Bathinda. The learned Civil Judge had passed the judgment and decree dated 01.03.2006 in favor of the respondent on the ground that the respondent was never informed about the option available under the Regulations and he came to know about this Scheme only at the time of his retirement. The learned Civil Judge further directed the Corporation to release pensionary benefit to the respondent along with interest @9% per annum till the date of realization. Being aggrieved by the judgment and decree dated 01.03.2006, the Corporation filed a Regular Second Appeal in the Court of District Judge, Bathinda, the same was allowed vide Judgment and order dated 27.04.2006 on the ground that respondent is estopped from claiming any pensionary benefit by his act of receiving all the retrial benefits under the C.P.F. Scheme at the time of his retirement and failing to exercise the option in terms of Regulation 4 of the Regulations in order to avail the benefits under the pension scheme. Aggrieved by this order of the Additional District Judge dated 27.04.2006, the respondent filed a Regular Second Appeal in the High Court, the same was allowed vide order and judgment dated 23.12.2008. The High Court has followed its earlier Judgment in Civil Writ Petition No. 14562 of 2004 titled as 'Jagjit Singh v. Managing Director, Pepsu Road Transport Corporation and another' dated 03.12.2008, wherein, the appeal was allowed on the ground that the pension scheme was never circulated nor was informed to the employees of the Corporation and mere non-refund of the loan taken from the C.P.F. account would not disentitle the employee from claiming pension under the scheme.

6) The issue involved in the present appeal for our consideration is: Whether the respondents are eligible to claim pensionary benefits under the Pension Scheme in view of the non- compliance of

the essential conditions stipulated in the Regulations which govern the said Pension Scheme?

7) Shri K. K. Mohan, learned counsel has appeared for the Corporation and the respondents are represented by a battery of learned counsel. We will refer to their submissions while dealing with the issue canvassed before us.

8) Learned counsel for the Corporation submits that the respondents having not exercised their option for the pension scheme within the time specified in the Regulations and those having opted but not having complied with the terms and conditions stipulated in the Regulations which govern the pensionary benefits, the High Court erred in law granting relief in question. In other words, he submits that the respondents are ineligible to claim any pensionary benefits under the Pension Scheme since they have failed to comply with quintessential conditions, namely Regulation 3 and 4 of the said Regulations. He further submits, relying on the decision of this Court in *Union of India v. M.K. Sarkar*, (2010) 2 SCC 59, that the respondents cannot take the plea that they were not given the opportunity to opt for the Pension Scheme in the absence of the service of notice by the Corporation to its individual employees.

9) Learned counsel for respondents submits relying on *Dakshin Hayana Bijli Vitran Nigam v. Bachan Singh*, (2009) 14 SCC 793, that in Mangal's and Jagroop's appeals, the respondents were not given the opportunity in order to exercise the option for the Pension Scheme as no individual notice was served to them. Therefore, they were unable to exercise the option for availing the benefits under the Pension Scheme in terms of the Regulation 4 of the Regulations.

10) The learned counsel for respondent in Mangal's appeal further submits that the respondent's services were terminated when the Pension Scheme was introduced. Therefore, the re-joining of duty by the respondent after the termination of his services is not covered by Regulation 4 of the Regulations. In other words, the learned counsel submits that Regulation 4 contemplates the exercise of option only by an employee, under suspension and leave, within further period of 6 months from the date of joining of duty after suspension.

11) Learned counsel submits that, in Baldev's and Bachittar's appeals, the respondents opted for the Pension Scheme and did not refund the amount of advance taken from the C.P.F. including employer's contribution as the nature of the advance was non-refundable, which is not covered by Regulation 3 (h) of the said Regulations. Learned counsel alternatively argues that even if there is failure of the respondents to refund the employer's contribution in terms of Regulation 3(h) of the Regulations, it does not disentitle the respondents from receiving pensionary benefits as the advance due to employer's contribution of C.P.F. could be duly adjusted against the respondents contribution by virtue of Regulation 20(3) and 24 (3) of the Regulations.

12) The Pepsu Road Transport Corporation was constituted in terms of the provisions of the Road Transport Corporations Act, 1950 (hereinafter referred to as "the 1950 Act"). By reason of the provisions of Section 4 thereof, each Corporation is a body corporate having perpetual succession and a common seal and can, in its own name, sue and be sued.

13) Section 45 of the 1950 Act authorises the Corporation to frame Regulations for the administration of the affairs of the Corporation. The Section reads :-

"45. Power to make Regulations.--(1) A Corporation may, with the previous sanction of the State Government, make Regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation. (2) In particular, and without prejudice to the generality of the foregoing power, such Regulations may provide for all or any of the following matters, namely--

(a) the manner in which, and the purposes for which, persons may be associated with the Board under Section 10;

(b) the time and place of meetings of the Board and the procedure to be followed in regard to transaction of business at such meetings;

(c) the conditions of appointment and service and the scales of pay of officers and other employees of the Corporation other than the Managing Director, the Chief Accounts Officer and the Financial Adviser or, as the case may be, the Chief Accounts Officer-cum-

Financial Adviser;

(d) the issue of passes to the employees of the Corporation and other persons under Section 19;

(e) the grant of refund in respect of unused tickets and concessional passes under Section 19."

14) The Regulations provide for the grant of retirement benefits to the employees of the PEPSU Road Transport Corporation with effect from 15.06.1992.

15) To appreciate the point in issue, it would be necessary to refer to the relevant Regulations :

"Regulation 3. Application: (1) These Regulations shall apply to the employees of the PEPSU Road Transport Corporation who:

(i) Were/are appointed on or after the date of issue of Regulations on whole-time and regular basis; and

(ii) Were working immediately before the date of issue of Regulations and opt for these Regulations. (2) These Regulations shall not apply to the employees, who:

a) Opt out of these Regulations.

b) Are on deputation with the Corporation.

- c) Are paid out of contingencies.
- d) Are work charged employees.
- e) Are employed on contract basis, except when the contract provided otherwise.
- f) Are re-employed after superannuation.
- g) Are specifically excluded wholly or partly from the operation of these Regulations;  
and
- h) Opt for the PRTC Employees Pension/Gratuity and Regulations General Provident Fund, 1992, but failed to refund the amount of advance taken out of the Employer's share of the Contributory Provident Fund alongwith interest thereon within the stipulated period."

Regulation 4. Exercise of Option: The option under clause (ii) of the sub-rule (1) of Regulation 3 shall be exercised in duplicate in writing in Form I so as to reach the managing director as forwarded by the general manager in case of depots and administrative officer in the case of headquarters with his counter signatures within a period of six months from the date of issue of these Regulations.

Provided that:

- (i) In the case of an employee, who on the date of the issue of these Regulations was abroad or on leave, the option shall be exercised within a period of six months from the date of taking the charge of his post.
- (ii) Where an employee is under suspension, on the date of issue of these Regulations, the option shall be exercised within a period of six months from the date of his joining the duty.
- (iii) An option once exercised shall be final, provided the concerned employee deposits the Corporation's share of C.P. Fund received by him - taken in advance, if any, within a period of six months from the date of issue of Regulations and if a person fails to exercise his option under the said Regulations within the specified period referred to above, it shall be deemed he has opted to continue for the existing Contributory Provident Fund benefit.
- (iv) An employee who dies on or after the issue of these Regulations and who could not exercise his option the legal heir of such employee, who is entitled to receive retirement benefits under the said Regulations, shall exercise option, subject to the condition that the legal heir shall have to deposit the amount of the Corporation's share of the C.P. Fund received by the deceased employee.



(v) The employee recruited after the introduction of the said pension Regulations will be covered under these Regulations.

Regulation 20. Subscription and Maintenance of General Provident Fund Account: (1) The employees, who were appointed on or after the commencement of these Regulations and also to the existing employees, who opt for those Regulations shall contribute towards the General Provident Fund at the rate prescribed by the Punjab Government for their employees. An employee may, however, subscribe voluntarily at higher rate than that prescribed by the Punjab Government. The Fund shall be regulated in accordance with the rules and procedure to be prescribed by the Punjab Government from time to time.

(2) The date of switchover for the existing employees to General Provident Fund shall be date of issue of these Regulations. The Corporation shall maintain the General Provident Fund Account at head office level. (3) An employee may be sanctioned an advance out of his own share (General Provident Fund) for transfer to Pension and Gratuity to meet with his liability of advance taken by him out of the employer's share of the Contributory Provident Fund.

Regulation 24. Adjustment and Recovery of dues: (1) The competent authority shall take steps to assess the dues outstanding against the employee two years before the date on which he is due to retire on superannuation.

(2) The assessment of the outstanding dues against the employees shall be completed by the competent authority eight months prior to the date of his retirement.

(3) The dues as assessed including those dues which come to the notice subsequently and which remain outstanding till the date of retirement of the employee, shall be adjusted against the amount of death-cum- retirement gratuity becoming payable to the employee on his retirement.

(4) When an employee retires from service, an office shall be issued to that effect by competent authority.

16) It is well settled law that the Regulations made under the statute laying down the terms and conditions of service of employees, including the grant of retirement benefits, has the force of law. The Regulations validly made under statutory powers are binding and effective as the enactment of the competent legislature. The statutory bodies as well as general public are bound to comply with the terms and conditions laid down in the Regulations as a legal compulsion. Any action or order in breach of the terms and conditions of the Regulations shall amount to violation of Regulations which are in the nature of statutory provisions and shall render such action or order illegal and invalid.

17) In *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi*, (1975) 1 SCC 421, this Court, while elaborately discussing the nature and effect of the Regulations made under the Statute, has observed:

"23. The noticeable feature is that these statutory bodies have no free hand in framing the conditions and terms of service of their employees. These statutory bodies are bound to apply the terms and conditions as laid down in the Regulations. The statutory bodies are not free to make such terms as they think fit and proper. Regulations prescribe the terms of appointment, conditions of service and procedure for dismissing employees. These Regulations in the statutes are described as "status fetters on freedom of contract". The Oil and Natural Gas Commission Act in Section 12 specifically enacts that the terms and conditions of the employees may be such as may be provided by Regulations. There is a legal compulsion on the Commission to comply with the Regulations. Any breach of such compliance would be a breach of the Regulations which are statutory provisions. In other statutes under consideration viz. the Life Insurance Corporation Act and the Industrial Finance Corporation Act though there is no specific provision comparable to Section 12 of the 1959 Act the terms and conditions of employment and conditions of service are provided for by Regulations. These Regulations are not only binding on the authorities but also on the public.

...

30. In this view a Regulation is not an agreement or contract but a law binding the corporation, its officers, servants and the members of the public who come within the sphere of its operations. The doctrine of ultra vires as applied to statutes, rules and orders should equally apply to the Regulations and any other subordinate legislation. The Regulations made under power conferred by the statute are subordinate legislation and have the force and effect, if validly made, as the Act passed by the competent legislature. ...

33. There is no substantial difference between a rule and a Regulation inasmuch as both are subordinate legislation under powers conferred by the statute. A Regulation framed under a statute applies uniform treatment to every one or to all members of some group or class. The Oil and Natural Gas Commission, the Life Insurance Corporation and Industrial Finance Corporation are all required by the statute to frame Regulations inter alia for the purpose of the duties and conduct and conditions of service of officers and other employees. These Regulations impose obligation on the statutory authorities. The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by courts to invalidate actions in violation of rules and Regulations. The existence of rules and Regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory Regulations in the cases under consideration give the employees a statutory status and impose restriction on the employer and the employee with no option to vary the conditions. An ordinary individual in a case of master and servant contractual relationship enforces breach of contractual terms. The remedy in such contractual relationship of master and servant is damages because personal service is not capable of enforcement. In cases of

statutory bodies, there is no personal element whatsoever because of the impersonal character of statutory bodies. In the case of statutory bodies it has been said that the element of public employment or service and the support of statute require observance of rules and Regulations."

18) In *Vidya Dhar Pande v. Vidyut Grih Siksha Samiti*, (1988) 4 SCC 734, the services of the appellant-employee were terminated, in contravention of the service Regulations, by the respondent school. This Court, while reinstating the employee in service, has agreed with the observations made in *Sukhdev Singh's case* (Supra). While doing so, this Court has stated :

9. The question whether a Regulation framed under power conferred by the provisions of a statute has got statutory power and whether an order made in breach of the said Regulation will be rendered illegal and invalid, came up for consideration before the Constitution Bench in the case of *Sukhdev Singh v.*

*Bhagatram Sardar Singh Raghuwanshi*. In this case it was held that: [SCC p. 438 : SCC (L&S) P. 118, para 33] "There is no substantial difference between a rule and a Regulation inasmuch as both are subordinate legislation under powers conferred by the statute. A Regulation framed under a statute applies uniform treatment to every one or to all members of some group or class. The Oil and Natural Gas Commission, the Life Insurance Corporation and Oil and Industrial Finance Corporation are all required by the statute to frame Regulations inter alia for the purpose of the duties and conduct and conditions of service of officers and other employees. These Regulations impose obligation on the statutory authorities. The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by courts to invalidate actions in violations of rules and Regulations. The existence of rules and Regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory Regulations in the cases under consideration give the employee a statutory status and impose restriction on the employer and the employee with no option to vary the conditions."

10. There is, therefore, no escape from the conclusion that Regulations have force of law. The order of the High Court must, therefore, be reversed on this point unhesitatingly.

19) Even in the case of non-statutory Regulations, specifically providing for the grant of pensionary benefits to the employee qua his employer shall be governed by the terms and conditions encapsulated in such non-statutory Regulations. In *Union of India v. Brig. P. K. Dutta (Retd.)*, 1995 Supp (2) SCC 29, this Court :

7. It is true that the Pension Regulations are non-

statutory in character. But as held by this Court in *Major (Retd.) Hari Chand Pahwa v. Union of India* 1995 Supp (1) SCC 221 , the pensionary benefits are provided for and are payable only under those Regulations and can, therefore, be withheld or forfeited under and as provided by those very Regulations. The following observations from the said judgment makes the position clear:

"We do not agree even with the second contention advanced by the learned counsel. The provisions of Regulation 16(a) are clear. Even if it is assumed that the Pension Regulations have no statutory force, we fail to understand how the provisions of the said Regulations are contrary to the statutory provisions under the Act or the Rules. The pension has been provided under these Regulations. It is not disputed by the learned counsel that the pension was granted to the Corporation under the said Regulations. The Regulations which provided for the grant of pension can also provide for taking it away on justifiable grounds."

20) In Rajasthan SRTC v. Bal Mukund Bairwa, (2009) 4 SCC 299, the services of the employee of the appellant were terminated by virtue of service Regulations (Statutory) made under Section 45 of the Road Transport Corporation Act, 1950. This Court, while upholding the jurisdiction of the Civil Court to entertain the suit filed by the employee challenging the order of termination of his services, has held:

"38. Where the relationship between the parties as employer and employee is contractual, the right to enforce the contract of service depending on personal volition of an employer is prohibited in terms of Section 14(1)(b) of the Specific Relief Act, 1963. It has, however, four exceptions, namely, (1) when an employee enjoys a status i.e. his conditions of service are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India or a statute and would otherwise be governed by Article 311(2) of the Constitution of India; (2) where the conditions of service are governed by statute or statutory Regulation and in the event mandatory provisions thereof have been breached; (3) when the service of the employee is otherwise protected by a statute; and (4) where a right is claimed under the Industrial Disputes Act or sister laws, termination of service having been effected in breach of the provisions thereof.

39. The appellant Corporation is bound to comply with the mandatory provisions of the statute or the Regulations framed under it. A subordinate legislation when validly framed becomes a part of the Act..."

21) 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, the retired employee is entitled to pension or not depend on the provisions and interpretation of Rules and Regulations. The Contributory Provident Fund appears to be 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 this Court that "pension is payable periodically as long as the pensioner is alive whereas C.P.F. is paid only once on retirement". Therefore, conceptually, pension and C.P.F. are separate and distinct.

22) Now we will try to explain the essential distinction between these two retirement benefits that an employee may derive at the time of his retirement from service. The C.P.F. was introduced with the object of providing social security to the employees working in factories and other establishments, after their retirement. The C.P.F. was instituted as a Compulsorily Contributory Provident Fund by the enactment of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Provident Fund Act"). The employee registered under the Provident Fund Act shall be entitled to claim all benefits available under the C.P.F. Scheme framed under the Act. This CPF Scheme requires opening of the account for the employee by the employer. The Government/employer is under the continuous obligation to deposit equal or matching contribution made by the employee in his account till he retires. Once the employee is retired, then his rights qua Government/employer's contribution into his C.P.F. account finally crystallizes. After retirement, this entire C.P.F. amount is paid to the employee as a retrial benefit. On the receipt of C.P.F. amount, the relationship between employee and employer ceases to exist without leaving any further legal right or obligation qua each other.

23) In Committee for Protection of Rights of ONGC Employees v.

O.N.G.C., (1990) 2 SCC 472, this Court has stated :

"12. Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Provident Fund Act') has been enacted with the object of providing social security to the employees in factories and other establishments covered by the said Act, after their retirement. In the Statement of Objects and Reasons for the said enactment it was mentioned as under:

"The question of making some provision for the future of the industrial worker after he retires, or for his dependants in case of his early death, has been under consideration for some years. The ideal way would have been provisions through old age and survivors' pensions as has been done in the industrially advanced countries. But in the prevailing conditions in India, the institution of a pension scheme cannot be visualised in the near future. Another alternative may be for provision of gratuities after a prescribed period of service. The main defect of a gratuity scheme, however, is that the amount paid to a worker or his dependants would be small, as the worker would not himself be making any contribution to the fund. Taking into account the various difficulties, financial and administrative, the most appropriate course appears to be the institution compulsorily of contributory provident fund in which both the worker and the employer would contribute. Apart from other advantages, there is the obvious one of cultivating among the workers a spirit of saving something regularly."

13. This indicates that the scheme of Contributory Provident Fund, by way of retiral benefit, envisaged by the Provident Fund Act, is in the nature of a substitute for old age pension because it was felt that in the prevailing conditions in India, the institution of a pension scheme could not be visualised in the near future. It was not the intention of Parliament that Provident Fund benefit

envisaged by the said Act would be in addition to pensionary benefits."

24) In *Krishena Kumar v. Union of India*, (1990) 4 SCC 207, this Court has held :

"32. The Railway Contributory Provident Fund is by definition a fund. Besides, the government's obligation towards an employee under CPF Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter."

25) In *All India Reserve Bank Retired Officers' Assn. v. Union of India*, 1992 Supp (1) SCC 664, this Court, while considering the case of the Pension Scheme and Contributory Provident Fund Scheme, has held:

"10. ... in the case of an employee governed by the Contributory Provident Fund Scheme his relations with the employer come to an end on his retirement and receipt of the contributory provident fund amount but in the case of an employee governed under the Pension Scheme his relations with the employer merely undergo a change but do not snap altogether."

26) Pension is a periodic payment of an amount to the employee, after his retirement from service by his employer till his death. In some cases, it is also payable to the dependents of the deceased employee as a family pension. The pension is in a nature of right which employee has earned by rendering long service to the employer. It is a deferred payment of compensation for past service. It is dependable on the condition of rendering of service by the employee for a certain fixed period of time with decent behavior. Like C.P.F., the object of providing pensionary benefit under the Pension Scheme is to provide social security to the employee and his family after his retirement from service. The Government's/Employer's obligation under the Pension Scheme begins only when the employee retires and it continues till the death of the employee.

27) In *Deokinandan Prasad v. State of Bihar*, (1971) 2 SCC 330, this Court has held:

"31. ... pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

28) In *D.S. Nakara v. Union of India*, (1983) 1 SCC 305, this court has observed:

"27. Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are (i) as compensation to former

members of the Armed Forces or their dependents for old age, disability, or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled, or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, rewards for service rendered, or as a means of promoting general welfare (see Encyclopaedia Britannica, Vol. 17, p. 575). But these views have become otiose.

28. Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in *Douge v. Board of Education*, 302 US 74, a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.

29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon."

29) In *Poonamal v. Union of India*, (1985) 3 SCC 345, this Court has observed:

"7. ... pension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone entitled to the pension under the rules can claim it as a matter of right. (*Deoki Nandan Prasad v. State of Bihar* 1971 (2) SCC 330, *State of Punjab v. Iqbal Singh* 1976 (2) SCC 1 and *D.S. Nakara v. Union of India* 1983 (1) SCC 305.) Where the Government servant rendered service, to compensate which a family pension scheme is devised, the widow and the dependent minors would equally be

entitled to family pension as a matter of right. In fact we look upon pension not merely as a statutory right but as the fulfilment of a constitutional promise inasmuch as it partakes the character of public assistance in cases of unemployment, old-age, disablement or similar other cases of undeserved want. Relevant rules merely make effective the constitutional mandate."

30) In *Krishena Kumar v. Union of India* (supra) this Court has held:

"32. ...On the other hand under the Pension Scheme the government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins."

31) In *Prabhu Narain v. State of U.P.*, (2004) 13 SCC 662, this Court has observed:

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

32) In *U.P. Raghavendra Acharya v. State of Karnataka*, (2006) 9 SCC 630, this Court has held:

"25. Pension, as is well known, is not a bounty. It is treated to be a deferred salary. It is akin to right of property. It is correlated and has a nexus with the salary payable to the employees as on the date of retirement."

33) The term pension has been defined in *American Jurisprudence* 2d, Vol. 60, at pg. 879 as thus:

"However, by modern usage, the "pension" is not restricted to pure gratuities. Thus, it has been held that a pension paid a governmental employee for long and efficient service is not an emolument the payment of which is barred by a state constitutional provision, but is a deferred portion of the compensation earned for services rendered. ... A pension is closely akin to wages in that it consists of payments provided by an employer, is paid in consideration of past services, and serves the purpose of helping the recipient meet the expense of living."

34) The concept of pension has been discussed in *Halsbury's Laws of England*, Fourth Edition (Reissue), Vol. 16, para. 400 as thus:

"Meaning of 'pension'. 'Pension' means a periodical payment or lump sum by way of pension, gratuity or superannuation allowance as respects which the Secretary of State is satisfied that it is to be paid in accordance with any scheme or arrangement having its object or one of its objects to make provision in respect of persons serving in particular employments for providing them with retirement benefits ... 'Pension'



does not include:

(i) a payment to an employee which consists solely of a return of his own contributions, with or without interest;

(ii) that part of a payment to an employee which is attributable solely to additional voluntary contributions by that employee made in accordance with the scheme or arrangement;

(iii) a periodical payment or lump sum, in so far  
as that payment or lump sum represents  
compensation under the statutory

compensation schemes and is payable under a statutory provision, whether made or passed before, on or after 31st July 1978"

35) The concept of pension has also been considered in *Corpus Juris Secundum*, Vol. 70, at pg. 423 as thus:

"A pension is a periodical allowance of money granted by the government in consideration or recognition of meritorious past services, or of loss or injury sustained in the public service. A pension is mainly designed to assist the pensioner in providing for his daily wants, and it presupposes the continued life of the recipient."

36) To sum up, we state that the concept of pension has been considered by this court time and again and in catena of cases, it has been observed that the Pension is not a charity or bounty nor is it a conditional payment solely dependent on the sweet will of the employer. It is earned for rendering a long and satisfactory service. It is in the nature of deferred payment for past services. It is a social security plan consistent with the socio-economic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution rendering social justice to a superannuated government servant. It is a right attached to the office and cannot be arbitrarily denied. [see *A.P. Srivastava v. Union of India*, (1995) 6 SCC 227, *Vasant Gangaramsa Chandan v. State of Maharashtra*, (1996) 10 SCC 148, *Subrata Sen v. Union of India*, (2001) 8 SCC 71, *Union of India v. P.D. Yadav*, (2002) 1 SCC 405, *Grid Corpn. of Orissa v. Rasananda Das*, (2003) 10 SCC 297, *All India Reserve Bank Retired Officers Assn. v. Union of India* (Supra)].

37) Having noticed the conceptual difference between the concept of C.P.F. and pension, we will now notice the submissions made by the learned counsel for the parties to the lis.

38) The common thread which runs through all these appeals canvassed before us is that the respondents have failed to comply with the terms and conditions of the Regulations, which govern the Pension Scheme. We have already considered the nature and effect of the Regulations, which are made under a statute. These statutory Regulations require to be interpreted in the same manner which is adopted while interpreting any other statutory provisions. The Corporation as well as respondents are obliged and bound to comply with its mandatory conditions and requirements. Any action or conduct deviating from these conditions shall render such action illegal and invalid. Moreover, the respondents have availed the retiral benefits arising out of the C.P.F and gratuity without any protest. The respondents in all these appeals, before us, have made a claim for pensionary benefits under the Pension Scheme for the first time only after their retirement with an unreasonable delay of more than 8 years. It is not in dispute, in some appeals, that the respondents never opted for the Pension Scheme for their alleged want of knowledge for non-service of individual notices. In other appeals, although respondents applied for the option of the Pension Scheme but indisputably never fulfilled the quintessential conditions envisaged by the Regulations which are statutory in nature.

39) The learned counsel for the respondents in support of their contention for want of knowledge of the Pension Scheme due to non-service of individual notices relied on the decision of this Court in *Dakshin Haryana Bijli Vitran Nigam v. Bachan Singh*, (2009) 14 SCC 793. The said decision is clearly distinguishable on facts. In that case, the appellant, Haryana State Electricity Board, had issued instructions dated 23.06.1993 and circular dated 09.08.1994 in order to provide an option to the employees for pensionary benefits in lieu of their work charged service with an express condition of noting of instructions from all the employees and acknowledging the receipt of the letter. In these appeals, before us, there is no such condition of noting from the employees or serving individual notices in the Pension Scheme or Regulations. Therefore, in our opinion, Bachan Singh's decision will not assist the respondents.

40) In our view, in the facts and circumstances of the present case and in view of absence of such condition in the scheme, it is not necessary for the Corporation to give an individual notice to respondents for exercising of option for pension Scheme and also for asking respondent to refund the employers contribution of C.P.F. at each stage. Furthermore, when notice or knowledge of the Pension Scheme can be reasonably inferred or gathered from the conduct of the respondents in their ordinary course of business and from surrounding circumstances, then, it will constitute a sufficient notice in the eyes of law. In *Union of India v. M.K. Sarkar*, (2010) 2 SCC 59, this Court has :

21. The Tribunal in this case has assumed that being "aware" of the scheme was not sufficient notice to a retiree to exercise the option and individual written communication was mandatory. The Tribunal was of the view that as the Railways remained unrepresented and failed to prove by positive evidence, that the respondent was informed of the availability of the option, it should be assumed that there was non-compliance with the requirements relating to notice. The High Court has impliedly accepted and affirmed this view. The assumption is not sound.

22. The Tribunal was examining the issue with reference to a case where there was a delay of 22 years. A person, who is aware of the availability of option, cannot contend that he was not served a written notice of the availability of the option after 22 years. In such a case, even if Railway Administration was represented, it was not reasonable to expect the department to maintain the records of such intimation(s) of individual notice to each employee after 22 years. In fact by the time the matter was considered more than nearly 27 years had elapsed.

Further when notice or knowledge of the availability of the option was clearly inferable, the employee cannot after a long time (in this case 22 years) be heard to contend that in the absence of written intimation of the option, he is still entitled to exercise the option.

23. This Court considered the meaning of "notice" in Nilkantha Sidramappa Ningashetti v. Kashinath Somanna Ningashetti, AIR 1962 SC 666. This Court held: (AIR p. 669, para 10) "10. We see no ground to construe the expression 'date of service of notice' in Column 3 of Article 158 of the Limitation Act to mean only a notice in writing served in a formal manner. When the legislature used the word 'notice' it must be presumed to have borne in mind that it means not only a formal intimation but also an informal one. Similarly, it must be deemed to have in mind the fact that service of a notice would include constructive or informal notice. If its intention were to exclude the latter sense of the words 'notice' and 'service' it would have said so explicitly."

41) The Regulation 4 (iii) of the Regulations is a deeming provision to the effect: firstly, if an employee fails to exercise his option within a period of 6 months from the date of issue of these Regulations and; secondly, even on exercise of option, if an employee fails to refund the amount of advance taken from employers contribution of the C.P.F. within 6 months from the date of issue of these Regulations, then it shall be deemed that employee has opted to continue for the existing C.P.F. benefit. Therefore, the failure on the part of the respondents to opt for the Pension Scheme and refund the advance taken from the employer's contribution of C.P.F. will disentitle them from claiming any benefit under the Pension Scheme. Therefore, we cannot sustain the Judgment and order passed by the High Court.

42) The appeals are accordingly allowed and the impugned Judgment and orders passed by the High Court are set aside. There will be no order as to costs.

.....J. [ D. K. JAIN ] .....J. [ H. L. DATTU ] New Delhi.

May 12, 2011