

Madho Singh Negi vs Registrar on 28 January, 2022

Author: Sharad Kumar Sharma

Bench: Sharad Kumar Sharma

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) No. 1348 of 2020

Madho Singh NegiPetitioner
Versus
Registrar, Cooperative Societies and others Respondents
With
Writ Petition (S/S) No. 1453 of 2020

Girish Chandra Joshi (since deceased)Petitioner
Versus
Uttarakhand State Cooperative Federation Ltd.
and others Respondents
With
Writ Petition (S/S) No. 1454 of 2020

Sardar Singh GusainPetitioner
Versus
Uttarakhand State Cooperative Federation Ltd.
and others Respondents
With
Writ Petition (S/S) No. 1460 of 2020

Damyanti HasanPetitioner
Versus
Uttarakhand State Cooperative Federation Ltd.
and others Respondents
With
Writ Petition (S/S) No. 1854 of 2020

Ghanshyam SinghPetitioner
Versus
U.P. State Cooperative Federation Ltd.
and others Respondents
With
Writ Petition (S/S) No. 1902 of 2020
Chandi Prasad RaturiPetitioner

Versus
2

U.P. State Cooperative Federation Ltd.
and others Respondents

With
Writ Petition (S/S) No. 369 of 2021
Ajeet SinghPetitioner

Versus
U.P. State Cooperative Federation Ltd.
and others Respondents

With
Writ Petition (S/S) No. 374 of 2021
Om PrakashPetitioner

Versus
U.P. State Cooperative Federation Ltd.
and others Respondents

With
Writ Petition (S/S) No. 389 of 2021
Ganesh PrasadPetitioner

Versus
U.P. State Cooperative Federation Ltd.
and others Respondents

With
Writ Petition (S/S) No. 434 of 2021
Shriniwas KashyapPetitioner

Versus
U.P. State Cooperative Federation Ltd.
and others Respondents

With
Writ Petition (S/S) No. 485 of 2021
Ashutosh SrivastavaPetitioner

Versus
U.P. State Cooperative Federation Ltd.
and others Respondents

With
Writ Petition (S/S) No. 1828 of 2020
Narendra Singh NegiPetitioner

Versus
Uttarakhand Cooperative Federation Ltd.
and others Respondents

3

Present :-

Mr. Harendra Belwal, Advocate, for the petitioners.

Mr. Subhash Upadhaya, Advocate, for the Uttarakhand Cooperative Federation.

Mr. Ashish Joshi, Advocate, for the U.P. Cooperative Federation.

Date of Reserved : 02.12.2021

Date of Judgment : 28.01.2022

JUDGEMENT

Hon'ble Sharad Kumar Sharma, J.

Widely, the issue, which is under consideration in these bunch of Writ Petitions, relates to the issue of fixation of liability of the respective petitioners or their successors (in some of the Writ Petitions), who are the retired employees, for the purposes of remittance of the amount of gratuity, leave encashment, benefits of the ACPs, arrears of the pay and other retiral benefits, and as to in what manner, the same has to be bifurcated, settled and be made liable to be paid by the respective Cooperative Federations of the two States, i.e. Uttarakhand Cooperative Federation Limited and that of the U.P. Cooperative Federation Ltd and what specific laid down criterion is to be followed.

2. On an overall analysis, the basic controversy for consideration would be, that in an undivided State of U.P., all the petitioners of the present bunch of Writ Petitions, were admittedly initially appointed and they had been working with the U.P. State Cooperative Federation Limited, which later on, on account of the settlement arrived at on the basis of Memorandum of Understanding, between the two Cooperative Federations of the State of U.P. and Uttarakhand, the employees working therein with the U.P. Cooperative Federation Limited, later on, on their option, or even otherwise too, their services were admittedly transferred and merged with the Uttarakhand Cooperative Federation Limited.

3. As a consequence thereto, when these particular petitioners, after the merger of their service with the Uttarakhand Cooperative Federation Limited, had attained their respective age of superannuation, it then that the controversy arose, as to in what manner, the retiral benefits which were legally payable, under the different heads, as detailed above, would be bifurcated to be imposed upon, as a liability, on the two Cooperative Federations of State of U.P. and Uttarakhand, for the reason being, that in most of the cases, the petitioners, whose services have been later merged, they had partly rather major part of their services have, served with the U.P. Cooperative Federation Limited, and thereafter, for a certain limited and specified tenure of services, as a consequence of their merger of services, they have worked with the Uttarakhand Cooperative Federation Limited and later on, they have attained their respective age of superannuation from the Uttarakhand Cooperative Federation.

4. The issue would have had to be dealt with from different perspectives and particularly, one of the most major provisions, which will be having a bearing on the issue is as to what would be the consequential effect of the merger of services of the employees who were working with the U.P. Cooperative Federation, when their services have been merged with the Uttarakhand Cooperative Federation and its consequential effect, what impact would Section 54 of the U.P. Reorganization Act, would have over the service conditions of the merged employees, whose services have been thus merged with the Uttarakhand Cooperative Federation; because as per the wider principles which

had been laid down under Section 54 of the U.P. Reorganization Act, in fact, it had rather postulated that as a consequence of the merger of services of the employees from the U.P. Cooperative Federation Limited with the Uttarakhand Cooperative Federation Limited and for that matter also in relation to any other employees of the State or other Cooperation, it had laid down, that as a consequence of the merger of their services, as a result of the bifurcation of the State or the creation of a new Cooperation or Federation, as the case in hand is, when the services of the employees thus stand merged, the same cannot be, in any manner, be detriment to their service benefits, which they would have been otherwise entitled to receive, had the State not been bifurcated as per the provisions of the Reorganization Act, w.e.f. 9th November, 2000. For the purposes of reference, the language used under Section 54 of the Reorganization Act, which is extracted hereunder :-

"54. Pensions.--The liability of the existing State of Uttar Pradesh in respect of pensions shall pass to, or be apportioned between, the successor States of Uttar Pradesh and Uttaranchal in accordance with the provisions contained in the Eighth Schedule to this Act."

5. In fact, its basic intention and the purposes was that on account of the political or the constitutional amendment made, with the enforcement of the U.P. Reorganization Act of 2000, in fact, the employees who have been thus working in their respective territorial domain of the two newly created States, i.e. State of Uttarakhand and State of U.P., their interest and the consequential service benefits would still to be continued to be made payable to them and it ought to have been protected without any detriment being attached to it. As a result thereto, the controversy arose for consideration before this Court, as to what would be the effect on the condition of services, in relation those employees, whose services later on stood merged, as a consequence of creation of State of Uttarakhand and the effect of their merger of respective services with the Uttarakhand Cooperative Federation Limited qua their service benefits. The matter travelled before the Division Bench of this Court in the Writ Petition, being Writ Petition 448 of 2018 (S/B), Chandra Mohan Arora Vs. Uttarakhand State Cooperative Federation Limited and others, and the said controversy was laid to rest by the judgment dated 29.11.2019, of the Division Bench by the observation, which were made in para 9, 10 and 11 of the said judgment, which is extracted hereunder:

"9. While it is true that the petitioner ceased to be an employee of the Uttar Pradesh Co-operative Federation from 01.01.2005 onwards, and the liability to pay his retiral dues from 01.01.2005 is that of the Uttarakhand State Co-operative Federation and not the Uttar Pradesh Co-operative Federation, the petitioner is entitled to have his retiral benefits computed on the basis of the wages last drawn by him i.e. the salary and allowances which he drew on 31.12.2014 (the date of his retirement). The aforesaid orders of this Court required the retiral benefits of the petitioner, such as gratuity and leave encashment, to be computed as on the date of his retirement which, in the present case, is 31.12.2014; and, on computation of his retiral benefits, the Uttarakhand State Co-operative Federation is obligated to pay its proportionate share of his retiral dues from 01.01.2005 till 31.12.2014, and the obligation of the Uttar Pradesh Co-operative Federation is to make payment of the retiral dues, so computed, from 31.01.1984 till 31.12.2004 i.e. for a period of nearly 21 years.

10. The Uttar Pradesh Co-operative Federation has, conveniently, computed gratuity and leave encashment of the petitioner on the basis of the salary and allowances he drew on 31.12.2004, and not on the basis of the salary and allowances which was being paid to him on the eve of his retirement on 31.12.2014. This mode of computation by the Uttar Pradesh Co-operative Federation has been faulted in the judgment of the Division Bench of this Court in Special Appeal No.137 of 2015 and batch dated 03.07.2017. We are also not impressed with the submission of Mr. Ashish Joshi, learned Standing Counsel for the Uttar Pradesh Co-operative Federation, that the Uttarakhand State Co-operative Federation should be directed to pay the said amount to the petitioner, and adjust it from the amount they owe to the Uttar Pradesh Co-operative Federation, which he claims is in excess of Rs.2.27 crores. The amounts, which the Uttar Pradesh Cooperative Federation claims is due to them from the Uttarakhand State Co-operative Federation, can only be recovered in duly constituted legal proceedings, and not in a writ petition filed by an employee seeking payment of his retiral dues. The Uttar Pradesh Co-operative Federation cannot avoid its liability towards its erstwhile employees by asking the Uttarakhand State Co-operative Federation to make payment.

11. We consider it appropriate, in such circumstances, to direct the Uttar Pradesh Co-operative Federation to compute the retiral benefits of the petitioner for the period from 31.01.1984 till 31.12.2014 (the period he served under the Uttar Pradesh Co-operative Federation), and pay him gratuity and leave encashment for the said period on the basis of the salary and allowances last drawn by him on 31.12.2014. The petitioners retiral benefits, as computed in terms of the aforesaid directions, shall be paid to him within three weeks, from the date of productions of a certified copy of this order, along with interest @ 8% per annum. Suffice it to make it clear that, in case the retiral benefits as directed to be paid, along with interest at 8%, is not paid within the time stipulated hereinabove, the petitioner shall thereafter be entitled for payment of these retiral benefits with interest @ 15% per annum."

6. Wherein, in the aforesaid judgment dated 29.11.2019, it has been provided particularly in para 11 of the judgment that an appropriate direction has had to be issued for the U.P. Cooperative Federation, to compute and determine the retiral benefits of the employees, who had retired subsequent to the merger of their services from the Uttarakhand Cooperative Federation and the total tenure of services, which they have rendered in the State of U.P., that has had to be taken into consideration and included for the purposes of determination of the gratuity and leave encashment amount, along with other retiral dues, which would have been made legally payable to the retired employees, for that specific tenure of service, which they have rendered in the State of U.P., and in fact, it was the U.P. Cooperative Federation Limited, which was made responsible to meet up the said part of the liability, which was otherwise to be borne by them owing to the dispensation of the services by the petitioners for the U.P. Cooperative Federation Limited, which had been later on determined to be calculated by U.P. Cooperative Federation, on the basis of last pay certificate, issued to the merged employees on attainment of their age of superannuation.

7. The similar controversy was also earlier considered by the Division Bench of this Court in Special Appeal in Special Appeal No. 137 of 2015, U.P. State Co-Operative Federation, Lucknow and another Vs. Rajendra Singh and others, which was decided by the judgment of 3rd July, 2017, though with the slight deviation from the principle issue of the fixation of liability for the payment of gratuity amount and leave encashment and other retrial benefits. In fact, the decision of the Division Bench as rendered on 3rd July, 2017, had rather laid down and based on the principle, that even for the tenure of service, which the employees, who had retired from the State of Uttarakhand, and the last pay drawn certificate has been issued in their favour, in that eventuality, the determination of their retrial allowances with regard to those merged employees, who have retired from their services, from the Uttarakhand Cooperative Federation has had to be made by the U.P. Uttarakhand Cooperative Federation, based on the last pay certificate, which has been issued by the Uttarakhand Cooperative Federation in relation to the respective employees of the Uttarakhand Cooperative Federation Limited.

Relevant paras of the judgment dated 03.07.2017 is extracted hereunder:-

"24. As far as the contention based on the memorandum of understanding dated 09.08.2012 is concerned, it deals with the issue relating to the amount of gratuity on which wages last drawn is calculated. It is a matter which we have already dealt with earlier in the judgment.

25. We see no merit in the appeals and the same are hereby dismissed. No order as to costs."

8. However, the judgment of 29th November, 2019, as it was rendered by the Division Bench of this Court in Writ Petition 448 of 2018 (S/B), Chandra Mohan Arora Vs. Uttarakhand State Cooperative Federation Limited and others, was put to challenge by the Managing Director, U.P. Cooperative Federation Lucknow, in SLP (C) No. 5914 of 2020, Managing Director, P.C.F., Lucknow Vs. Uttarakhand State Cooperative Federation and others, which was ultimately dismissed by the Hon'ble Apex Court too vide its judgment of 27th August, 2020, and hence, the liability, which has now been fastened, as per the decision taken by the Division Bench on 29th November, 2019, for the purposes of remittance of the retrial dues by the State of U.P., it was held to be based on the principles and the foundation of last pay certificate issued by Uttarakhand Cooperative Federation, as laid down in the judgment of 3rd July, 2017, which was to be determined, on the basis of the last pay certificate issued by the Uttarakhand Cooperative Federation, which has to be taken as to be the basis for the remittance of the dues for the period of services, for which, the services have been rendered by the employees in the U.P. Cooperative Federation, all these issues have been laid to rest and thus as a consequence to the aforesaid judgment, few principles, which has already been determined and is no more res integra or a bone of contention are:-

(i). That the employees of the U.P. Cooperative Federation like, that of petitioners, who, as a consequence of the merger of their service with the Uttarakhand State Cooperative Federation Ltd., their liability for the payment of gratuity, leave encashment and other retrial benefits for the period prior to the merger of services

with the Uttarakhand Cooperative Federation, has had to be borne by U.P. Cooperative Federation, for the period of services prior to their merger of services.

(ii). It is no more a bone of contention, which is under debate at any platform, that for the period of services rendered by the employees of the U.P. Cooperative Federation, whose services later on have been thus merged with the Uttarakhand Cooperative Federation, for the tenure of services from the date of respective merger of services with the Uttarakhand Cooperative Federation Ltd., till they have attained their respective age of superannuation, the liability of that part has to be met with by the Uttarakhand Cooperative Federation, as the basis of their last pay certificate.

(iii). In the light of the judgment of Special Appeal No. 137 of 2015, dated 3rd July, 2017, the controversy has been further laid to rest, that even the U.P. Cooperative Federation Ltd., when they are determining the amount payable towards gratuity, leave encashment and other retiral benefits for the period of service rendered with them, they will have to determine it on the basis of the last pay drawn certificate, which has been issued by the Uttarakhand Cooperative Federation, to the employees on their attainment of age of retirement and hence, their retiral benefits would not be determined by the U.P. State Cooperative Federation, based upon their determination on the basis of last pay salary, which was then being drawn by them on the date of merger of their services with the Uttarakhand Cooperative Federation

9. In yet another judgment, which was rendered in Civil Appeal, being Civil Appeal No. 7113 of 2014, D.D. Tewari Vs. Uttar Haryana Bijli Vitran Nigam Limited and others, it had widely discussed the issue of entitlement of interest on the delayed payment of retiral benefits, pension etc. particularly, the reference may be had to para 5 and 6 of the said judgment, which is extracted hereunder:-

"..... 5. It is needless to mention that the respondents have erroneously withheld payment of gratuity amount for which the appellants herein are entitled in law for payment of penal amount on the delayed payment of gratuity under the provisions of the Payment of Gratuity Act, 1972. Having regard to the facts and circumstances of the case, we do not propose to do that in the case in hand.

6. For the reasons stated above, we award interest at the rate of 9% on the delayed payment of pension and gratuity amount from the date of entitlement till the date of actual payment. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date of amount falls due to the deceased employee. With the above directions, this appeal is allowed."

10. It was concisely dealing with the issue about the entitlement of the payment of the interest too; to those employees, who had retired from their respective services in the light of the statutory stipulation contained under Section 7 (3A) of the Payment of Gratuity Act.

11. In view of the aforesaid wider principles, which now already stands settled and there is no controversy as such, which has now left to be discussed by this Court, that it is rather the U.P. Cooperative Federation, which will have to pay their part of the retiral benefits to the merged employees of the Uttarakhand Cooperative Federation, that too, it would be based on the last pay certificate issued by the Uttarakhand Cooperative Federation, by determining the amount payable for the period of services, which they have respectively rendered with the U.P. Cooperative Federation, and further, that on the delayed payment of the amount of gratuity and other legally entitled retiral dues paid belatedly, which the petitioner would be entitled to receive interest, they would be bound to pay the interest as it has been laid down in the judgment rendered in Civil Appeal No. 7113 of 2014 (Supra).

12. Hence, since all these aspects as dealt with above, being commonly involved consideration, in almost all the matters, they are being dealt with together.

13. Factually, since in each of the Writ Petitions, enlisted herein below, there would be a slight factual difference in the determination of their claim, depending upon the period of services rendered with the respective Federations, they are required to be dealt with separately, in relation to each of the Writ Petition.

14. In Writ Petition No. 1348 of 2020, Madho Singh Negi Vs. Registrar, Co-operative Societies and others, the petitioner at the relevant time was inducted as Class-IV employee, with the Drug Factory, Ranikhet with the respondents on 01.04.1978, and had claimed for the gratuity and leave encashment amount, along with the other retiral dues has already been calculated to be made payable by respondent No. 2 and 3, herein, i.e. Uttarakhand Cooperative Federation, who vide its communication of 3rd July, 2015, and according to the determination which has been thus made, it is contended in the Writ Petition, that respondent Nos. 2 and 3 had already paid the gratuity amount for the period of ten years, amounting to Rs.1,51,385/- and they have also paid the leave encashment for 61 days amounting to Rs.53,355/-, based on the last pay certificate dated 31.01.2015. It is submitted that the respondent No. 6 in the instant Writ Petition has issued a letter dated 31st January, 2015, to the U.P. Cooperative Federation, for the purposes of remittance of amount of gratuity and other retiral dues, to the petitioner for the period of his services from 23rd April, 1974 till 31st December, 2004, i.e. the date when the petitioner's services were actually merged with the respondents, Uttarakhand Cooperative Federation Ltd., based on the last salary drawn and it was observed that the petitioner would be entitled to receive Rs.3,37,371/- payable toward gratuity amount and Rs.1,29,883/- which would be payable towards the leave encashment.

15. The Uttarakhand Cooperative Federation has submitted, that as far as their liability is concerned, they have already paid their liability to the petitioner vide their letter dated 3rd July, 2015. But for the balance amount, its rather the U.P. Cooperative Federation, who has to pay the balance amount, and has submitted that by way of their correspondence of 30th March, 2016, that they have paid an amount of Rs.1,11,921/- payable towards gratuity, but the contention of the petitioner is that the said remittance of the gratuity amount by the U.P. Cooperative Federation, is not in consonance with the judgment rendered on 3rd July, 2017 in Special Appeal 137 of 2017, as the same has not been remitted to him on the basis of the last salary drawn and hence, the petitioner has contended, that

apart from the liability which has been referred by respondent No. 6, in its correspondence of 31st January, 2015, that would also be entitled for the remittance along with the interest amount also, which too has been otherwise envisaged to be made payable in accordance with the Notification SO No. 873 (E), 874 (E), Ministry of Labour, issued by the Government of India on 1st October, 1987, making the payability of interest, under Section 7 (3A) as to be a mandatory statutory interest, which each of the employees would be entitled to receive on attainment of the age of superannuation and due to the delayed payment of the statutory gratuity. Hence, the petitioner had, in the Writ Petition, prayed that an appropriate direction may also be issued by way of writ of mandamus commanding the respondents to release the gratuity and earned leave and other admissible dues along with the statutory interest payable under Section 7 (3A), based upon the ratio, which has already been dealt with above by this Court, as well as by the Notification of Government of India dated 01.10.1987.

16. The stand taken by the U.P. Cooperative Federation, though without filing any counter affidavit on record, but they have supplied a tabulation Sheet No.PCF/Prashashan/2021-22/485/dated 3rd November, 2021, wherein, particularly in relation to the petitioner, they have submitted, that in view of the communication No. 5503 dated 30th March, 2016, it was observed that till an amount of Rs. 2.27 crores stand settled between the Uttarakhand Cooperative Federation and U.P. Cooperative Federation, the amount cannot be remitted to the petitioner. The relevant stand taken by the U.P. Cooperative Federation as on 03.11.2021 is extracted as under :-

"5503 fno 30&3&16 }kjk ihlh,Q dks ;wlh,Q }kjk ns; /kujkf"k :

2-27 djksM ls lek;ksftr dj Hkqxrku ;wlh,Q }kjk fd;k x;k gSA"

17. In Writ Petition No. 1453 of 2020, Girish Chandra Joshi Vs. Uttarakhand State Co-Operative Federation Ltd. and others, it is contended by the petitioner, that he was working with the respondents as a Junior Assistant, and at the time when his services were transferred and merged with Uttarakhand Cooperative Federation w.e.f. 7th October, 2002 and on his attainment of age of superannuation on 1st August, 2014, he since having retired from the services, as Junior Assistant, a last pay certificate was issued accordingly in his favour by the competent authority of Uttarakhand Cooperative Federation on 29th August, 2014. He had submitted that after the attainment of the age of superannuation on 31st August, 2014, in fact, the Uttarakhand Cooperative Federation, vide their communication of 22nd November, 2014, had calculated the gratuity and leave encashment amount, along with the other dues, which were payable to the petitioner for the period from 23.06.1982 to 30.09.2002, but the same amount has not been paid to the petitioner by the U.P. Cooperative Federation on the basis of last pay certificate despite of the fact that the issue stands settled by the judgments rendered therein as referred above by the Hon'ble Apex Court, as well as by the Division Bench judgments of this Court.

18. The petitioner submitted, that as far as the Uttarakhand Cooperative Federation is concerned , the Uttarakhand Cooperative Federation, vide its communication of 22nd November, 2014, had already determined the gratuity amount payable for a period of 12 years of services, amounting to Rs.2,93,988/- and the leave encashment amount for a period of 155 days, amounting to

Rs.2,19,402/-, which has already been paid to the petitioner by the Uttarakhand Cooperative Federation, on the basis of the last pay certificate 29.08.2014, but however, so far as the balance amount for the period of services from 23rd June, 1982 till the date of his merger of services in the State of Uttarakhand, i.e. 30th September, 2002, the same still has not yet been paid by the U.P. Cooperative Federation, which as per the contention of the petitioner, which has already been determined to be paid to the tune of Rs.4,89,982/- towards gratuity and an amount of Rs.2,05,247/- towards the leave encashment, as per the correspondence dated 22.11.2014 (Annexure-4 to the Writ Petition).

19. The U.P. Cooperative Federation have filed their counter affidavit on 13th April, 2021, wherein, they have submitted, that on the basis of the last pay salary drawn by the petitioner, as shown vide their communication of 3rd September, 2021, they have rather shown to have calculated the retiral dues of the petitioner and the same has been alleged to be remitted based on the said determination of last pay drawn vide their order dated 4th February, 2015, and it is contended that as a consequence thereto, an amount of Rs.1,00,846/- towards gratuity and Rs. 42,243/- towards leave encashment has already been sanctioned; but the said amount, which is alleged to have been sanctioned has once again been made subject, to its disbursement of the disputed amount of Rs.2.27 crores, which is disputed between the two Cooperative Federation of the State of U.P. and the State of Uttarakhand. It has been submitted by the U.P. Cooperative Federation, that at the time of creation of two Federations, a memorandum of understanding was arrived at between them on 9th August, 2012, i.e. between the Secretaries, of the two Cooperative Federations and as amongst the list of 49 employees, which was provided therein, it disclosed the name of the employees, who have attained the age of superannuation. But, in this case too, they have reiterated and took the same stand, as that the determination of the gratuity and leave encashment amount would only be remitted to the petitioner based on the last pay drawn as on 30th September, 2002, which is in contempt to the judgment dated 03.07.2017, rendered in Special Appeal No. 137 of 2015. The reason given for non payment in the tabulation dated 03.11.2021, is yet again a contempt to the judgments at the hands of the authorities of U.P. Cooperative Federation, the relevant part is extracted as under :-

"4954 fno 4&2&13 }kjk ihlh,Q dks ;wlh,Q }kjk ns; /kujkf"k :

2-27 djksM ls lek;ksftr dj ds Hkqxrku ;wlh,Q }kjk fd;k x;k gSA"

20. The petitioner of Writ Petition No. 1454 of 2020, Sardar Singh Gusain Vs. Uttarakhand State Co-Operative Federation Ltd. and others, had submitted that he was working with the respondents ever since 19.01.1987 as an Operator in Soya Bean Vanaspathi Industries, Haldachaur, Haldwani, District Nainital, which was initially within territorial domain of the undivided State of U.P., but later on with the creation of the Uttarakhand Cooperative Federation, his services stood merged in the said capacity as an Operator, with respondent Nos. 1 and 2, i.e. in the year 2005, with the Uttarakhand Cooperative Federation coming into its statutory existence. He submitted that as far as the Uttarakhand Cooperative Federation, is concerned, the respondent Nos. 1 and 2 vide its order of 1st September, 2008, the ACP benefits which were payable to the petitioner on a satisfactory completion of 18 and 24 years of service respectively, had already been remitted to the petitioner,

prior to attainment of age of superannuation on 31st August, 2011. The petitioner submitted that when despite of several requests and efforts having been made by the petitioner to the respondents, for the purposes of remittance of the entire retiral benefits, the same was not remitted, he was constrained to file an earlier Writ Petition, being Writ Petition (S/S) No. 33 of 2012, Sardar Singh Gusai Vs. U.P. State Cooperative Federation and others, which was disposed of by the Coordinate Bench of this Court vide its judgment of 15th May, 2013, wherein the Coordinate Bench of this Court had issued the following directions:

"Accordingly, I direct the respondents authority to take decision on the prayer for payment of arrears of gratuity, leave encashment allowance calculated on the basis of past pay drawn by him and other post retirement benefits including the amount of security of the petitioner with interest @ 18% per annum till actual date of payment. Decision shall be taken after hearing the petitioner, if required, upon service of notice within a period of eight weeks from the date of receipt of this order. The writ petition is disposed of."

21. When the said direction as it was given by the Coordinate Bench vide its judgment of 5th May, 2013, was not complied with, he had to file a Contempt Petition too, being Contempt Petition No. 91 of 2014, but since none appeared on 29th August, 2019, to press the contempt petition, the Contempt Petition itself was dismissed in default.

22. The petitioner contended that after attainment of the age of superannuation on 31st August, 2011, unlike the other merged employees, with the Uttarakhand Cooperative Federation, it had determined the retiral benefits which were legally payable to the petitioner and accordingly, vide their communication dated 3rd September, 2011, the Uttarakhand Cooperative Federation had calculated and paid their part of the gratuity amount for a period of seven years, amounting to Rs. 98,000/- and leave encashment amount of Rs.84,246/- for 84 days, and for the balance amount, the Uttarakhand Cooperative Federation vide its letter dated 03.09.2011, had written to the U.P. Cooperative Federation on 3rd September, 2011, directing therewith to remit the balance gratuity amount of Rs. 2,52,000/- and leave encashment amount of Rs. 2,16,634/-, i.e. total amount of Rs.4,68,683/-, payable for the period of services rendered from 19.01.1987 till 31.12.2004, i.e. till the date of merger of his services till attainment of age of retirement, on the basis of last wages drawn, by the petitioner.

23. The petitioner has contended that out of the total amount thus recommended to be paid by the Uttarakhand Cooperative Federation, to the U.P. Cooperative Federation vide its communication of 3rd September, 2011, in fact, the U.P. Cooperative Federation has sanctioned an amount 1,18,000/- payable towards gratuity vide its order of 1st November, 2013 and leave encashment amount for 216 days, amounting to Rs.81,878/- vide its order of 24th December, 2013. But, still, despite settled law, the U.P. Cooperative Federation has not yet remitted the balance amount for the period w.e.f. 19th January, 1987 till the date of merger of the services of the petitioner on 31st December, 2004, i.e. gratuity for 18 years, amounting to Rs.2,39,716/- and leave encashment, amounting to Rs.1,66,234/-. Hence, primarily the petitioner's contention is that the U.P. Cooperative Federation is still liable to pay a total balance amount of Rs.4,05,994/- based on the communication of

Uttarakhand Cooperative Federation dated 3rd September, 2011, after excluding from it, the amount already paid by the U.P. Cooperative Federation vide their letter of 1st November, 2013, and 24th December, 2013 respectively. The petitioner's contention, herein, is that unlike the principles, which has been laid down by the aforesaid judgments referred above, he would also be entitled for the remittance of the balance amount by the U.P. Cooperative Federation, based on the last pay certificate issued by the Uttarakhand Cooperative Federation, as issued in his favour on attainment of his age of superannuation on 31st August, 2011.

24. The U.P. Cooperative Federation had filed a counter affidavit to the Writ Petition on 13th April, 2021, and in reply thereto, they have submitted that the gratuity amount of Rs.1,18,094/- is due to be paid to the petitioner as per and in compliance of the decision rendered in Writ Petition No. 33 of 2012, as decided on 15th May, 2013, and they have contended, that vide their letter of 1st November, 2013, the aforesaid amount totaling to Rs.1,99,972/- has already been sanctioned to be paid and just a converse stand has been taken by the U.P. Cooperative Federation in the communication which was made to the Court in the tabulation sheet as provided on 3rd November, 2021, wherein, in relation to the petitioner they have submitted that a cheque bearing No. 009355 dated 13th December, 2013, has been issued in favour of the petitioner for an amount of Rs.1,18,094/-, but the balance amount, which was shown to have been sanctioned in the correspondence of 1st November, 2013, is not reflected to have been paid to the petitioner as shown in their letter No. 13-14/3139 dated 1st November, 2013. The relevant part of which is extracted hereunder :-

"3139 fno 01&11&13 ds dze esa dks ihlh,Q }kjk psd lao 009355 fno 13&12&13 ds }kjk Hkqxrku fd;k x;kA"

25. The petitioner of Writ Petition No. 1460 of 2020, Damyanti Hasan Vs. Uttarakhand State Co-Operative Federation Ltd. and others, in fact, the petitioner to the Writ Petition, is a widow of the deceased employee, who was initially engaged with the U.P. Cooperative Federation on 06.07.1985 as an Operator, i.e. late Mr. David Arif Hasan, who met with the said demise on 27th August, 2019. It is contended by the widow of the petitioner, that the late husband of the petitioner who was appointed as a Shift Operator, with the U.P. Cooperative Federation on 6th July, 1985 and he had retired from the services of the Uttarakhand Cooperative Federation, on 30.10.2010 after merger of his services, and since having worked with them as "Incharge", in Soya Bean Vanaspati Industries Haldachaur, Haldwani, District Nainital and before his retirement, the last pay certificate which was issued in his favour by respondent Nos. 1 and 2 on 25th November, 2010.

26. She has submitted that as far as the Uttarakhand Cooperative Federation is concerned, considering the period of services rendered by the late husband of the petitioner with the Uttarakhand Cooperative Federation from 31.12.2004 till 20.11.2010, is concerned on 29th November, 2010, the Uttarakhand Cooperative Federation had already sanctioned the gratuity amount for the period of six years, amounting to Rs.84,000/- and leave encashment for 190 days, amounting to Rs.87,915/- i.e. a total amount of Rs.1,71,915/- has already been paid by the Uttarakhand Cooperative Federation for the aforesaid tenure of services referred above, on the basis of last drawn salary certificate, issued to her late husband on 25.11.2010.

27. The grievance of the petitioner is that presently she is agitating her claim for the payment of the balance amount for the period of initial appointment of her husband, w.e.f. 6th July, 1985 till his services were merged with the Uttarakhand Cooperative Federation till 31st December, 2004, to a gratuity amount of Rs.2,66,000/- and a leave encashment for 210 days of service, amounting to Rs.2,05,135/- totaling to Rs.4,71,135/-, which was still due to be paid to the petitioner, on its determination to be made on the basis of last pay certificate, along with the statutory interest to be payable on it.

28. She had submitted that she would be entitled for the consideration of the remittance of the aforesaid amount, based on one of the judgments, which she had referred to in the Writ Petition, being rendered in Writ Petition (S/S) No. 210 of 2011, David Arif Hasan Vs. U.P. Cooperative Federation and another, which was earlier preferred by the late husband of the petitioner, and as it was decided on 29th March, 2011 by the Coordinate Bench of this Court, wherein, the Coordinate Bench, in its judgment, based upon the earlier judgments, rendered on 20th November, 2006, having being rendered in Writ Petition No. 1176 of 2005, Anand Swaroop Vs. U.P. State Cooperative Federation and others, as well as the judgment of the Division Bench dated 15th June, 2007, rendered in Special Appeal No. 176 of 2006, U.P. State Cooperative Federation Ltd. and another Vs. Anand Swaroop and others, had issued directions to the respondents, that based on the memorandum of understanding which has been arrived at between the two Cooperative Federations, since its a unilateral cancellation of Memorandum of Understanding, it will not have any bearing, as far as the remittance of the retiral benefits are concerned, to the retiral employees of the two Cooperative Federations, in the light of the provisions of Section 54 of the Reorganization Act, 2000.

29. The petitioner submitted, that when despite of various efforts made by the late husband of the petitioner by submitting the representations on 7th March, 2011, 1st April, 2011 and 7th July, 2011, when despite of it the amount was not remitted in relation to their share, by the U.P. Cooperative Federation, which was bound by the principles laid down by the Hon'ble Apex Court, as well as the judgment of the Division Bench of this Court on 30th July, 2011, and had paid only part of the gratuity amount, leave encashment and arrears of salary amounting to Rs.2,43,973/-, but the balance amount, which was determined to be made payable to her, as dues of her late husband, as per the decision of the Uttarakhand Cooperative Federation dated 30.07.2011, referred to the U.P. Cooperative Federation, has not been yet been remitted for the period of services from 6th July, 1985 to 31st December, 2004. Hence, she has filed the Writ Petition with the prayer of mandamus commanding the respondents, that since now it is no more an issue which is res integra, the claim of the petitioner for the remittance of entire dues for the services rendered by the late husband of the petitioner with the U.P. Cooperative Federation, deserves to be remitted to her along with the statutory interest payable on it under Section 7 (3A) of the Act, as it has been determined to be made payable by the notification issued by the Notification No. 873 (E) and 874 (E) issued by the Government of India on 1st October, 1987.

30. The respondent Nos. 3 and 4, herein, i.e. U.P. Cooperative Federation, though have factually admitted the details, which has already been discussed above. They have rather given a very vague reply with regard to the discharge of their part of liability, for the payment of the retiral benefits,

based on the last pay certificate which was issued in favour of the late husband of the petitioner on 25.11.2010. Although the tabulation provided by the respondents, i.e. U.P. Cooperative Federation Letter No.PCF/Prashashan/2021- 22/4851, on 3rd November, 2021 during the court proceedings, they have submitted, that the total gratuity amount of Rs.1,24,184/- along with the interest payable on it to the tune of Rs. 10,000/- have already been remitted to the petitioner through cheque No. 647765 dated 19th July, 2011, but the counter affidavit or the communication of 3rd November, 2021, as filed by the U.P. Cooperative Federation is silent with regard to their liability for the remittance of the balance amount of retiral dues for the period of the services rendered by the late husband of the petitioner for the services rendered by him with the U.P. Cooperative Federation.

31. In Writ Petition No. 1854 of 2020, Ghanshyam Singh Vs. U.P. State Co-Operative Federation Ltd. and others, the petitioner had submitted that he after having attained the age of superannuation; after having worked with the Uttarakhand Cooperative Federation, having retired from the services on 31st January, 2011, when the gratuity amount, leave encashment and other retiral benefits were not paid to him despite of the various efforts made by the petitioner, he had preferred a Writ Petition, being Writ Petition No. 435 of 2011, Ghanshyam Singh and another Vs. U.P. Cooperative Federation Ltd. and another, which was disposed of by the Coordinate Bench of this Court by the judgment of 13th May, 2011, with the following directions :-

"....Mr. Ashish Joshi, learned counsel appearing for U.P. Cooperative Federation Ltd. admits that the matter is squarely covered by decision dated 29.9.2011 passed in the abovesaid writ petition.

As such, this writ petition is also disposed of in terms of the order dated 29.3.2011 passed by this Court in Writ petition No. 210 of 2011 (S/S) David Arif Hasan Vs. U.P. Cooperative Federation Ltd. and another."

32. The petitioner submitted that despite of the aforesaid decision rendered by the Coordinate Bench of this Court, which was based upon the judgments rendered by the Coordinate Bench earlier on 29th March, 2011, when the amount was not remitted, even despite of the decision and the dictum of the Coordinate Bench rendered in Writ petition No. 738 of 2014, Rajendra Singh Vs. U.P. State Cooperative Federation and others, as decided on 24th March, 2017, the petitioner had no other option, except to file the present Writ Petition for the remittance of the amount of retiral benefits payable to him.

33. The petitioner submitted that after having retired from the post of Head Fitter in the month of January, 2011, but since as a consequence of the merger of the services with the Uttarakhand Cooperative Federation, the Uttarakhand Cooperative Federation on 31st January, 2011, had issued a last payment certificate certifying the salary as drawn by the petitioner for the purposes of determination of the retiral benefits being letter No.Soya/Van/Lekha/2010-11 dated 21.01.2011. He submitted, that as far as Uttarkhand Cooperative Federation is concerned, the Uttarakhand Cooperative Federation, have calculated and paid part of the amount of gratuity for the period of six years and earned leave amount for the period of 127 days by virtue of their communication No. 5768-73/UCF/Sthapan/2010-11 dated 3rd February, 2011, and as consequence thereto, an amount

of Rs.84,000/- and 1,27,800/- respectively, amounting to total of Rs. 2,11,800/- has already been paid by the Uttarakhand Cooperative Federation. The controversy, which now is supposed to be agitated by the petitioner is that the Uttarakhand Cooperative Federation, vide its communication No. 5768-73/UCF dated 3rd February, 2011, had written to U.P. Cooperative Federation that the balance amount of gratuity, i.e. Rs.2,66,000/- for a period of 19 years of service and an earn leave for the period of 173 days, amounting to Rs.1,74,090/- totaling to Rs.4,40,090/- with interest payable on it, is still due to be paid by the U.P. Cooperative Federation, but since the same has not been remitted, he had preferred the present Writ Petition, for the remittance of the statutory retiral benefits, based on the judgments rendered by this Court as well as the Hon'ble Apex Court..

34. But when despite of the repeated requests made by the petitioner to U.P. Cooperative Federation, when no response was received to his application dated 2nd October, 2020, the petitioner has preferred the Writ Petition, contending thereof that in view of the principles laid down by the various judgments already referred above in the body of the judgment, the U.P. Cooperative Federation, would be liable to remit the balance amount of the retiral benefits which has been referred to be paid as per the correspondence made by Uttarakhand Cooperative Federation.

35. In response to the contention and the relief claimed by the petitioner in the present Writ Petition, the counsel for respondent Nos. 1 and 2, herein, i.e. U.P. Cooperative Federation has filed their response by way of counter affidavit on 13th April, 2021, referring therewith that in view of the communication of 7th October, 2011, written by the Managing Director, while referring to the decision taken by the High Court of Uttarakhand in its judgment of 13th June, 2011, and the decision taken in the Writ Petition No. 210 of 2011 dated 29th March, 2011, some of the amount as referred therein has already been made payable to the petitioner, who had retired on 31.01.2011, from their services as a Head Fitter. In the communication of 7th October, 2021, in fact, if the said letter is scrutinized, the respondents had only approved for the payment of gratuity to the tune of Rs. 1,27,461/- and leave encashment of Rs. 67,055/- but in the concluding part of the said correspondence dated 07.10.2021, it was observed that the remittance of the said amount though thus was shown to stand approved from the office, but the same would be only made payable after the approval being made by the Headquarter, meaning thereby, according to the stand of respondent Nos. 1 and 2 also, no amount, as such those which are shown to have stood sanctioned as back as on 7th October, 2011, had not been paid to the petitioner till date, as it made subject to the approval to be granted by Head Quarters of respondent Nos. 1 and 2. Thus pleading in the counter affidavit, were nothing but an eyewash and contemptuous too.

36. The U.P. Cooperative Federation had filed a counter affidavit on 13th April, 2021, wherein, they have made reference that as a consequence of the judgment of 13th May, 2011, as rendered in Writ Petition No. 435 of 2011, the petitioner has been paid with the retiral benefits vide their letter dated 7th October, 2011, which has been annexed with the counter affidavit, but yet again, in the said communication very craftily though the respondents refers to the sanction of the gratuity amount and leave encashment amount as well as the other dues, which has been detailed therein, but they have submitted that the said amount would be only made payable to the petitioner subject to the approval being granted by the Headquarters of the U.P. Cooperative Federation. But on the converse

stand taken by them in the details supplied to the Court by the U.P. Cooperative Federation, being letter No. PCF/Admin/2021-22/4851 dated 3rd November, 2021, while referring to the communication of 7th October, 2021, in relation to the petitioner, they have submitted, that an amount of Rs.1,27,461/- along with the interest of Rs.10,000/- has been paid to the petitioner vide cheque No. 228358 dated 5th October, 2011, but the details supplied to the Court or in the counter affidavit, they are absolutely silent with regard to the actual remittance of the balance amount, which the petitioner would have been entitled to receive for the period of services rendered with the U.P. Cooperative Federation.

37. In Writ Petition (S/S) No. 1902 of 2020, Chandi Prasad Raturi Vs. U.P. State Co-Operative Federation Ltd. and others, this is the second round of litigation, before that, the petitioner had approached the Writ Court by filing the Writ Petition (S/S) No. 1809 of 2014, which was disposed of by the Coordinate Bench of this Court vide its judgment dated 7th November, 2014, with the following directions :-

"2. This controversy, however, has already been decided by the Division Bench of this Court in U.P. Cooperative Federation Ltd. & another Vs Uttaranchal State Cooperative Marketing Federation Ltd. & others (decided on 14.05.2010 in SPA No. 229 of 2009), which in turn was based on previous judgment of this Court, wherein it has been held that it is a liability of the Uttar Pradesh State Federation Ltd. to pay all dues upto 31.12.2004 and liability to pay the dues commencing from 01.01.2005 on the Uttarakhand State Cooperative Federation Ltd.

3. According to the counsels for the Uttarakhand State Cooperative Federation Ltd., these dues have already been paid to the petitioner, but the liabilities of Uttar Pradesh State Federation Ltd. upto 31.12.2004 has not been paid to the petitioner so far.

4. Learned counsels for the respondents stated at bar that the present matter is squarely covered by the decision of this Court in U.P. Cooperative Federation Ltd. & another Vs Uttaranchal State Cooperative Marketing Federation Ltd. & others (decided on 14.05.2010 in SPA No. 229 of 2009).

5. In view of the above, the Writ Petition is disposed of in terms of the aforesaid judgment passed in U.P. Cooperative Federation Ltd. & another Vs Uttaranchal State Cooperative Marketing Federation Ltd. & others. (decided on 14.05.2010 in SPA No. 229 of 2009).

6. It is made clear that while calculating the post retirement benefits of the petitioner, the last salary drawn by the petitioner be taken into consideration.

38. The facts are that the petitioner in this Writ Petition had approached the Writ Court, for the second time for the redressal of his grievance for the non payment of the gratuity, earned leave and other admissible dues, which according to him, he contended that he was entitled to receive, after

his attainment of age of superannuation having retired from the services on 31st January, 2013, as a Store Keeper, for the period from 27.07.1984 till 31.12.2004 when his services were merged with the U.K. Cooperative Federation.

39. The petitioner's contention was that he was initially appointed on 21st July, 1984, as a Store Keeper in Soya Bean Evam Vanaspathi Industries, Halduchaur, Haldwani, District Nainital, with the then U.P. Cooperative Federation, but, as a consequence of the creation of the State of Uttarakhand, and taking over of the U.P. Cooperative Federation, the Uttarakhand Cooperative Federation, came into existence, and consequently his services stood merged with the Uttarakhand Cooperative Federation w.e.f. 01.01.2005. As a consequence of the merger of his services with the Uttarakhand Cooperative Federation, he was granted with the benefit of 1st and 2nd ACPs on completion of 18 and 24 years of services respectively by an order 16th February, 2008. He further submitted that prior to his attainment of age of superannuation on 31st January, 2013, the Uttarakhand Cooperative Federation, vide its communication No. 9860-65/UCF/Stha/2012-13 dated 16.03.2013, in fact, had already calculated the total amount of gratuity and earned leave, which was payable to the petitioner for the services rendered by him with the Uttarakhand Cooperative Federation for a period from 01.01.2005 to 31.01.2013, and as a consequence thereto, the gratuity amount for the period of one year was assessed to be made payable, amounting to Rs.23,270/- and the leave encashment amount for 20 days was assessed to be Rs. 26,889/-, which has already been remitted by the Uttarakhand Cooperative Federation, for the aforesaid period from 01.01.2005 to 31.01.2013.

40. He further submitted that the aforesaid communication of 16th March, 2013, was also referred by Uttarakhand Cooperative Federation to the U.P. Cooperative Federation, whereby, on the basis of the last pay certificate issued in favour of the petitioner by the Uttarakhand Cooperative Federation on 1st November 2014, the U.P. Cooperative Federation was made liable to pay a gratuity amount of Rs.4,65,392/- and earned leave amount for Rs.2,27,215/- for the period of services from 21st July, 1984 to 31st December, 2004, i.e. prior to the merger of his services.

41. The petitioner contended that the U.P. Cooperative Federation on 21st February, 2015, though had sanctioned the gratuity amount of Rs.2,15,329/-, but the same was not calculated on the basis of the last pay certificate, which was issued by the Uttarakhand Cooperative Federation in his favour on 1st November, 2014, and hence, he submitted that he would be entitled to receive the retiral dues of Rs.7,24,821/-, as it was assessed by the Uttarakhand Cooperative Federation in its correspondence dated 26.09.2013, made to the U.P. Cooperative Federation, as to be an amount, which was payable to the petitioner.

42. The Writ Petition was contested by the respondent Nos. 1 and 2, i.e. U.P. Cooperative Federation, and in response to it, in the counter affidavit, they have referred to the sanction of the retiral benefits, as made on 21st February, 2015, to which, the dissatisfaction has been recorded by the petitioner, since not being based on the last pay certificate, apart from it, the respondent Nos. 1 and 2 have also made reference to the Memorandum of Understanding dated 09.02.2005, as arrived at between the two Cooperative Federations in accordance with the provisions contained under Sections 48, 59 and 60 of the Reorganization Act, which was later on withdrawn, but however, in the list of employees, whose services were treated to have been merged with the Uttarakhand

Cooperative Federation, the petitioner's name found place at S.No. 9 of the said list.

43. During the course of proceedings of the present Writ Petition though after filing of their counter affidavit on 13.04.2021, the U.P. Cooperative Federation had supplied a tabulation sheet dated 03.11.2021, wherein, in its last column, they have assigned the reasons of their inability to remit the amount of gratuity and leave encashment and in the petitioner's case, the following reference has been made as to be the reason for their inability to pay the amount, which is extracted hereunder:-

"4815 fno 21&2&15 }kjk ihlh,Q dks ;wlh,Q }kjk ns; /kujkf"k :

2-27 djksM ls lek;ksftr dj ds Hkqxrku ;wlh,Q }kjk fd;k x;k gSA"

44. Writ Petition (S/S) No. 369 of 2021, Ajeet Singh Vs. Uttar Pradesh State Co-Operative Federation Ltd. and others, is the second phase of litigation at the behest of the petitioner for the payment of the gratuity and retiral benefits, which he was deprived to be remitted on account of an inaction on the part of U.P. Cooperative Federation. At the first instance, he had approached the Writ Court by filing the Writ Petition, being Writ Petition No. 212 of 2011, Ajeet Singh Vs. U.P. Cooperative Federation Ltd. and another, which was disposed of by the Coordinate Bench of this Court by the judgement of 29th March, 2011 with the following directions :-

"Today a counter affidavit has been filed by Sri Joshi representing the U.P. State Cooperative Federation, which is taken on record. In the counter affidavit, the sole ground for creating a difference between the present case and in the earlier cases is that according to the respondents earlier cases were decided on the basis of a Memorandum of Understanding dated 6.11.2004, between the U.P. State Cooperative Federation and Uttarakhand State Co-operative Federation by which the dues have to be given by the U.P. State Cooperative Federation. All the same unilaterally the "U.P. State Cooperative Federation"

has now cancelled this Memorandum of Understanding vide order dated 10.11.2010 and since the Memorandum of Understanding was cancelled on 10.11.2010 and the petitioner retired on 31.01.2011, this benefit cannot be granted to the petitioner. This in short is now the argument of Sri Joshi. This argument of the learned counsel for the respondents is wholly misconceived inasmuch as the said Memorandum of Understanding has been considered by the learned Single Judge of this Court as well as by the Division Bench of this Court and the benefits accruing to the employees have been granted to them. It is not open to the "U.P. State Cooperative Federation"

to unilaterally cancel an M.O.U. and merely because the M.O.U. has been cancelled it will not make any material difference in the case, as both the learned Single Judge as well as the Division Bench of this Court have relied upon the said M.O.U. in their earlier orders. The U.P State Cooperative Federation has evidently only unilaterally recalled the said M.O.U. (which in any case they cannot) purely in order to circumvent judicial orders of this Court. This case is therefore in no way different than the earlier cases, where an order has been passed in favour of similarly placed

persons. The writ petition is therefore disposed of in terms of the order dated 20.11.2006 passed in Writ Petition No. 1176 of 2005 (S/S) Anand Swaroop Vs. The U.P. State Co-operative Federation and others as well as the order dated 15.6.2007 passed by a Division Bench of this Court in Special Appeal No. 176 of 2006 U.P. State Cooperative Federation Limited and another Vs. Anand Swaroop and others."

45. As per the terms of the judgment which was decided on 29th March, 2011, the Coordinate Bench has directed the remittance of the amount of retiral benefits as per the judgement of 20th November, 2006, which was rendered in earlier Writ Petition (S/S) No. 1176 of 2005, Anand Swaroop Vs. U.P. State Cooperative Federation and others, which later on stood affirmed by the Division Bench in its judgement of 15th June, 2007, as rendered in Special Appeal Number 176 of 2006. After the judgement of 29th March, 2011, the petitioner had represented his grievances, once again before the U.P. Cooperative Federation on 11th April, 2011, for the remittance of the retiral benefits, as per the directions given in the judgement of 29th March, 2011.

46. In response to the correspondence made by the petitioner vide his representation of 11th April, 2011, the U.P. Cooperative Federation vide their letter No. PCF/Lekha/2011-12/49917, dated 30th July, 2011, had made part of the payment to the petitioner of the gratuity amount to Rs.1,67,128/-, earned leave Rs. 74,491/-, arrears of 5th Pay Commission of Rs. 31,665/- and an interest of Rs.10,000/-. But, since the said amount remitted by the U.P. Cooperative Federation by the correspondence of 30th July, 2011, was not on the basis of the last pay certificate, as issued in his favour by the Uttarakhand Cooperative Federation, by an order No. 4959-62/UCF dated 18th January, 2012, the petitioner had to prefer the present Writ Petition, being Writ Petition (S/S) No. 369 of 2021, seeking an appropriate direction to the U.P. Cooperative Federation, that as per the interest protected under Section 54 of the Reorganization Act, he would be entitled for the remittance of the retiral benefits, including the gratuity and the earned leave for the period from 20th May, 1977 till 31st December, 2005, when he was initially inducted as a Junior Assistant in the District Office Haldwani, District Nainital, and later on, when his services were merged with the Uttarakhand Cooperative Federation w.e.f. 01.01.2005.

47. He submitted that after attainment of the age of superannuation on 31st January, 2011, and since having retired as a Junior Assistant, the Uttarakhand Cooperative Federation vide its correspondence of 3rd February, 2011, had disbursed their part of liability vide letter No. 5762-67/UCF/2010-11, whereby, a gratuity for 6 years, amounting to Rs. 61,765/-, and earned leave amount for 84 days amounting to Rs. 78,764/- was remitted to the petitioner on the basis of the last pay certificate dated 18.01.2012, which was issued by the Uttarakhand Cooperative Federation, certifying the last salary drawn by the petitioner.

48. The petitioner in the Writ Petition had submitted that despite of the correspondence dated 3rd February, 2011, by the Uttarakhand Cooperative Federation to the U.P. Cooperative Federation, since the amount of the gratuity and earned leave for the period from 30th May, 1977 to 31st December, 2004, was not paid on the basis of the last salary drawn, as certified by the Uttarakhand Cooperative Federation, the necessity arose for the petitioner to prefer the Writ Petition, when his representation dated 6th November, 2020, remained un-responded.

49. On issuance of the notices, the respondent Nos. 3 and 4, herein, have filed their counter affidavits, wherein, the Uttarakhand Cooperative Federation, has submitted that they have discharged their part of liability, as per the last pay certificate issued by the department and as detailed above, and hence, no liability as such, rests upon them now for the payment of the amount of the retiral benefits for the period of services rendered by the petitioner with the State of Uttar Pradesh.

50. The U.P. Cooperative Federation on 13th April, 2021, had submitted a very vague and evasive counter affidavit, without giving any specific reason or details, for as to why, the retiral benefits for the period 30th May, 1977 to 31st December, 2004, was not being remitted to the petitioner based on the last pay certificate, issued by the Uttarakhand Cooperative Federation in favour of the petitioner. In this case too, when the Writ Petition was being argued, the U.P. Cooperative Federation had supplied a tabulation chart dated 03.11.2021, giving therein, the details of their inability, wherein to show their bona fide, they have rather reiterated, that they have issued a cheque on 4th July, 2011, to the tune of Rs. 1,67,128/- along with interest of Rs. 10,000/-, bearing Cheque No. 647764 dated 19th July, 2011, but the grievance of the petitioner is that this amount, which has been detailed in the tabulation sheet, which is alleged to have been paid to the petitioner, since not being in consonance with the principal of the last pay certificate, the same cannot be sustained. The relevant part of the tabulation is extracted hereunder :

"7839 fno 4&7&2011 ds dze esa ihlh,Q }kjk psd la 647764 fno 19&07&11 }kjk fd;k x;kA"

51. In Writ Petition (S/S) No. 374 of 2021, Om Prakash Vs. Uttar Pradesh State Cooperative Federation Ltd. and others, the petitioner has come up with the case, that he was appointed with the respondent No.2, vide their letter of appointment dated 12.12.1985, as a consequence thereto, he joined his services on 25th January, 1986, as a Shift Operator and that he worked in the said capacity till his services were merged with the Uttarakhand Cooperative Federation on 01.01.2005, and he worked so in the capacity of the Shift Operator in the Cooperative Drug Factory Ranikhet, District Almora, having work with the respondents in the said capacity, he had attained his age of superannuation on 31st July, 2015.

52. The petitioner has come up with the case in the Writ Petition, that on his attainment of age of superannuation, as far as the Uttarakhand Cooperative Federation is concerned, they had vide their letter Nos. 1122-26/PCF/2015-15 dated 29th July, 2015, as well as letter No 3446-50/PCF/2015-16 dated 27th February, 2016, had already sanctioned the gratuity amount for the period of 11 years of services, amounting to Rs. 3,15,785/- and earned leave for 120 days' amounting to Rs. 1,99,040/- that means the Uttarakhand Cooperative Federation has already remitted its share of liability under Section 54 of the Reorganization Act, to the tune of Rs.5,14,825/- . In fact, the aforesaid communications dated 27.02.2016, while sanctioning the aforesaid amount of the gratuity and earned leave to the petitioner, was also addressed by the Uttarakhand Cooperative Federation to the U.P. Cooperative Federation, thereby determining the total amount of gratuity for 19 years, which was assessed to be Rs. 5,45,446/- and earned leave of 180 days which was assessed to be Rs.2,98,560/- for the period of services, which the petitioner has rendered from 25th January, 1986,

till he attained the age of superannuation on 31st July, 2015, totalling to Rs.8,44,006/-, which was recommended to be paid to the petitioner on the basis of the last pay certificate which was issued by the Uttarakhand Cooperative Federation on 21st September, 2020, bearing letter No. CDF/Acdf/2020-21 dated 21st September, 2020.

53. The petitioner has further come up with the case, that the U.P. Cooperative Federation had only remitted a part of the retiral benefits on 21st June, 2016, through Cheque No. 48906 dated 20th December, 2016, totalling to Rs. 1,97,228/- but the said remittance of the amount by them was not based upon the last salary drawn, and hence, the petitioner had filed a representation on 5th October, 2017, contending thereof, that the petitioner ought to have been meted out with the same treatment as per the judgement dated 28th June, 2021, rendered by this Court in Writ Petition No. 3305 of 2017, but when the total amount was not remitted despite the claim being raised, as per the expectation of the petitioner, he had preferred this Writ Petition, which has been contested by the respondents by filing a counter affidavit, and particularly, the counter affidavit, which was filed by respondent Nos. 3 and 4, they have reiterated their stand pertaining to the remittance of the retiral benefits, detailed above based on the last salary drawn by the petitioner. But, so far as the U.P. Cooperative Federation is concerned, they too, while making reference to the Memorandum of Understanding arrived at as per the provisions contained under sections 48, 59 and 60 of the Reorganisation Act, on 9th August 2012, submitted that though the name of the petitioner did found place in the list of employees covered in the Memorandum of Understanding, as the petitioner's name figured at S.No. 48, but still since the amount was not remitted, hence the petitioner has preferred this Writ Petition contending thereof, that he would be entitled for the amount which was recommended to be paid by the Uttarakhand Cooperative Federation, vide its communication dated 27.02.2016, based on the last pay certificate issued in his favour on 21st September, 2020.

54. In this Writ Petition too, during the course of hearing, the U.P. Cooperative Federation, in the tabulation thus supplied on 3rd November, 2021, has once again carved, out a reason for non remittance of the amount, as given in the last column of the said tabulation sheet, which is extracted hereunder as to be the basis, that the amount cannot be remitted for the reason being that an amount of Rs. 2.27 crores, is still due to be adjusted between the two Cooperative Federations before any retiral dues could be paid to the petitioner. The relevant portion of the tabulation is extracted hereunder :-

"908 fno 21&6&16 }kjk ihlh,Q }kjk ns; /kujkf"k : 2-27 djksM ls lek;ksftr dj ds Hkqxrku ;wlh,Q }kjk fd;k x;k gSA"

55. In Writ Petition (S/S) No. 389 of 2021, Ganesh Prasad Vs. U.P. State Cooperative Federation Ltd. and others, in fact, this happens to be the second phase of litigation which had been agitated by the petitioner for the remittance of the retiral benefits. He had disclosed the fact, that earlier he has filed Writ Petition being Writ Petition No. 457 of 2012, which was disposed of by the Coordinate Bench of this Court vide its judgement of 24th March, 2017. The relevant part of the direction which were issued by this Court is extracted hereunder:-

".... Learned counsel for the petitioners submits that present lis is covered by the judgment rendered by the Co- ordinate Bench of this Court in Writ Petition No. 738 of 2014 in the case of Rajendra Singh Vs. U.P. State Cooperative Federation & others, and other analogous petitions decided on 25.02.2015.

Accordingly, the present petitions are disposed of with the direction to the respondents to consider the case of the petitioners as per the dicta of the judgment cited hereinabove within a period of eight weeks from today."

56. The brief facts, which the petitioner has agitated consistently before this Court in both the phases of litigation is, that the petitioners has contended that he was appointed as an Electrician Grade-II, with the U.P. Cooperative Federation, as back as on 15th June, 1987, and he was thus posted at Soya Bean Evam Vanaspathi Industries, Halduchaur, Haldwani, District Nainital, till his services were merged with the Uttarakhand Cooperative Federation, w.e.f. 01.01.2005. He contended that after having satisfactorily worked with the Uttarakhand Cooperative Federation, he had attained the age of superannuation on 31st January, 2011, and had retired from the post of Shift Operator, and in consonance to the services rendered by the petitioner after the merger of his services, he was issued with the last pay certificate by the Uttarakhand Cooperative Federation on 29th January, 2011, certifying the last pay which was drawn by him, based on which, the Uttarakhand Cooperative Federation, has determined the gratuity and earned leave amount vide their letter No. 5774- 79/UCF/2010-11 dated 3rd February, 2011, whereby, a gratuity amount for a period of six years of services, amounting to Rs. 74,807/- was paid and by the same correspondence, an earned leave of 74 days, amounting to Rs. 53,634/- was remitted by the Uttarakhand Cooperative Federation. For the rest of the period of services with effect from 15th June, 1987 to 31st December, 2004, the computation was made by the Uttarakhand Cooperative Federation, vide their communication made through letter No. 5774 dated 3rd February, 2011 to U.P. Cooperative Federation Ltd., and had recommended the U.P. Cooperative Federation for the remittance of the gratuity amount for 18 years, which was assessed to be Rs. 2,24,661/- and earned leave for 213 days, amounting to Rs. 1,53,601/- totalling to Rs. 3,78,262/-.

57. The petitioner has pleaded, that the U.P. Cooperative Federation, vide its Office correspondence No. 6488/93-UCF/2010-11 dated 3rd March, 2011, had sanctioned 30 days' of earned leave of Rs.21,634/-, but however, the remaining gratuity amount and the earned leave amount for 183 days, had not yet been remitted nor it has been determined till date on the basis of the last pay certificate which had been issued by the Uttarakhand Cooperative Federation on 29th January, 2011, despite of the fact that the U.P. Cooperative Federation vide their letter No. PCF/Lekha/2011-11/6930 dated 28th December, 2011, are shown to have assessed the gratuity amount of Rs. 76, 358/- and earned leave amount to Rs. 44,853/- and the arrears of the 5th Pay Commission amounting to Rs.16,429/- but these assessments of the retiral benefits as detailed above, are alleged to be not based upon the last pay certificate of 29th January, 2011, hence the petitioner has preferred the present Writ Petition, for the remittance of those retiral dues, on the basis of the last pay certificate of 29th January, 2011, in which, the respondents have filed the counter affidavit, and the stand taken by the Uttarakhand Cooperative Federation, have been to the effect that they have discharged their part of their liability of the retiral benefits, but so far is respondent Nos. 1 and 2 are concerned, i.e. U.P.

Cooperative Federation, they have once again given a very evasive reply, as to what attributed for them to not to remit the amount based on the last pay certificate issued, on the basis of the ratio laid down by the earlier judgements rendered by the Division Bench of this Court, as relied by the petitioner, which stood affirmed upto the Hon'ble Apex Court.

58. In this case too, the Uttarakhand Cooperative Federation during the course of argument in the tabulation sheet, which they have supplied on 3rd November, 2021, had given a statement to the effect that vide their letter No. 2276 dated 3rd October, 2011, an amount of Rs. 67,358/- along with interest of Rs.10,000/- have been paid to the petitioner through cheque No. 228629 dated 23rd December, 2011, to which, the counsel for the petitioner contends, that the said remittance of the amount is not as per the principles laid down by the judgements of this Court, nor it is based upon the last pay certificate, which was issued by the Uttarakhand Cooperative Federation on 29th January, 2011.

59. In Writ Petition 434 of 2021, Shriniwas Kashyap Vs. U.P. State Cooperative Federation Ltd. and others, yet again, this writ petition, happens to be a second phase of litigation. Earlier, the petitioner has approached the Writ Court by filing the Writ Petition (S/S) No. 2563 of 2017, which was disposed of by the Co-ordinate Bench of this Court vide its judgement on 2nd April, 2019. The relevant directions, which were issued by the court is extracted hereunder :-

"..... Learned counsel appearing for U.P. Cooperative Federation further submits that the U.P. State Cooperative Federation has filed SLP before Hon'ble Supreme Court against the judgment rendered by Division Bench of this Court. He fairly submits that there is no interim order passed by Hon'ble Supreme Court in the said S.L.P. In such view of the matter, the present writ petitions are disposed of in terms of the judgment dated 03.07.2017 rendered by Division Bench of this Court in Special Appeal No. 137 of 2015."

60. The petitioner contends, that when the said direction was not complied with, he had also filed a Contempt Petition, being Contempt Petition No. 515 of 2019, wherein, the Contempt Petition was closed on the ground that the U.P. Cooperative Federation, had issued a letter on 23rd September, 2020, contending thereof that they have sanctioned the gratuity amount of Rs. 2,25,894/- and an earned leave of 206 days amounting to Rs. 2,37,333/-, as well as compensation of Rs. 30,000/-. On the one hand, they have taken this stand in the Contempt vide their letter of 23rd September, 2021, but the petitioner has contended that out of the said amount, which was said and shown to have been remitted by the letter dated 23rd September, 2021, since the U.P. Cooperative Federation, has paid only part of the sanctioned amount of gratuity to the tune of R. 1,24,106/- towards the gratuity and Rs. 77,744/- towards earned leave and Rs.12,491/- towards the compensation. The petitioner was dissatisfied with the amount thus remitted by the U.P. Cooperative Federation, hence, he has filed this Writ Petition.

61. The petitioner submitted, that he was appointed on 2nd April, 1985, with the respondents as operator in Soya Bean Evam Vanaspathi Industries, Halduchaur, Haldwani, District Nainital, and since as a consequence of the merger of his services with the Uttarakhand Cooperative Federation

w.e.f. 01.01.2005, his pensionary benefits contemplated under Section 54 of the Reorganisation Act, was to be protected on the basis of the last pay certificate which had been issued by the Uttarakhand Cooperative Federation, on the date of his retirement i.e. 31st July, 2013, wherein, it was certified that the petitioner was being remitted with Rs.45,885/- per month, being his last salary drawn. It is the petitioner's case, that so far as the Uttarakhand Cooperative Federation is concerned, they vide their letter No. 2315-20/UCF/2013-14 dated 6th September, 2013, had already determined the gratuity and earned leave amount for the period from 01.01.2005 till 31st July, 2013, payable to the petitioner for the period of nine years towards the gratuity amount, totaling to Rs.2,17,111/- and earned leave for 94 days, amounting to Rs.1,31,017/- i.e. total Rs.3,48,128/- has already been paid by the Uttarakhand Cooperative Federation. The Uttarakhand Cooperative Federation had also forwarded its correspondence of 6th September, 2013 to the U.P. Cooperative Federation, observing thereof, that for the period from 2nd April, 1984 till 31st December, 2004, the petitioner would be entitled to receive the gratuity amount for a period of 19 years, amounting to Rs. 4,58,346/- and earned leave amount of 206 days, amounting to Rs. 2,87,123, totaling to Rs.7,45,469/-, but despite of the aforesaid communication of 6th September, 2013, the respondent U.P. Cooperative Federation, vide their letter of 26th December, 2013, being letter No. Soya/Van/Lekha/2012-13/576 dated 26th December, 2013, had only sanctioned the gratuity amount of Rs.21,138/- and earned leave amount of Rs. 12,756/- only, totalling to Rs. 33,894/- and hence, the petitioner has preferred this Writ Petition, for issuance of a writ of mandamus for, that he may be remitted the pensionary benefits, as recommended by the Uttarakhand Cooperative Federation in their tabulation given on 6th September 2013, on the basis of the last pay certificate issued in his favour.

62. In the Writ Petition, the U.P. Cooperative Federation has not filed any response by way of counter affidavit to the contentions raised by the petitioner in the Writ Petition, but however, the Uttarakhand Cooperative Federation has filed a counter affidavit and had reiterated their contention pertaining to the communication of 6th September, 2013, and the consequential amount which was already remitted by them to the petitioner. However, during the course of hearing, the U.P. Cooperative Federation in the tabulation of 3rd November, 2021, had observed that in compliance of the direction which were issued by the Court, the PCF Headquarters had issued letter No. 747 dated 4th June, 2014 and letter No. 1873 dated 23rd September, 2020, whereby, it was contended that an amount of Rs. 2,25,894/- has been remitted to the petitioner along with penalty of Rs.3,000/- but yet again, this amount thus paid was not in accordance with the actual entitlement of the petitioner, based on the last salary drawn. The observation made in the tabulation as supplied by the U.P. Cooperative Federation, is extracted hereunder :-

" : 1]24]106 ,oa ekOU;k;ky; ds 747 fn04&6&14 ,oa 2873 dze esa vUrj /kujkf"k
:2]25]984 fno 23&9&2020 ds dze ,oa dEiu"kslu : 3000 Hkqxrku esa ihlh,Q eq[;ky;
}kjk fd;k x;kA fd;k x;kA"

63. The petitioner of Writ Petition (S/S) No. 485 of 2021, Ashutosh Srivastava Vs. U.P. State Cooperative Federation Ltd. and others, is yet again a second phase of litigation. In fact, his late father, had earlier approached the Writ Court by filing Writ Petition No. 354 of 2009, wherein, his late father has prayed for the payment of the retiral benefits, i.e. gratuity and earned leave encashment, in which he contended, that he would otherwise be entitled to receive on account of the

services rendered by him with the U.P. Cooperative Federation. The Writ Petition thus preferred by the petitioner was disposed of by the Co-ordinate Bench of this Court by the judgement dated 12th November, 2009, with the following direction:

"These writ petitions are, therefore, allowed. UPSCF is hereby directed to make the payment of gratuity, leave encashment, arrears of pay to the petitioners for the period they served UPSCF till 31.12.2004 within a period of three months from the date a certified copy of this order is produced before UPSCF. As regarding interest, the same has been declined by the Division Bench of this Court and instead of interest of 6 % a quantified amount of interest of Rs. 10,000/- has been paid. Therefore, it is further directed that UPSCF shall pay a quantified amount of interest of Rs. 10,000/- to each of the petitioners.

These writ petitions are accordingly decided. No order as to costs."

64. Being aggrieved against the judgement of 12th November, 2009, the U.P. Cooperative Federation have preferred a Special Appeal, being Special Appeal No. 229 of 2009, which was dismissed by the Division Bench vide its judgement dated 14th May, 2010. As a consequence of the dismissal of the Special Appeal, the U.P. Cooperative Federation is said to have issued a letter, being letter No. PCF/Lekha/HQ/2010-11 dated 13th October, 2010, where the U.P. Cooperative Federation has claimed to have paid an amount of Rs. 2,38,375/- vide its cheque No. 2793 dated 4th October, 2010. The petitioner contends, that the said amount, which is said to have been remitted by the U.P. Cooperative Federation, vide their letter dated 13th October, 2010, do not commensurate to the principles laid for payment based on last pay certificate as issued by the Uttarakhand Cooperative Federation on 31st July, 2008, certifying the salary drawn by the late father of the petitioner as Rs.22,086/-, and hence, the petitioner submitted that he would be entitled for the payment of the amount based on the communication, which had been issued by the Uttarakhand Cooperative Federation to the U.P. Cooperative Federation vide their letter No. Soya/Van/Lekha/2010-11/514 dated 25th October, 2010. When the said amount was not remitted, the petitioner had filed the present Writ Petition, contending thereof, that his late father, who was appointed as an Operator with the respondent No. 2 on 11th July, 1985, and had worked in the said capacity with the respondents till he attained the age of superannuation on 31st July, 2008. He submitted that as far as, the Uttarakhand Cooperative Federation is concerned, the Uttarakhand Cooperative Federation has discharged their part of liability by remitting the amount vide their Letter No. 8212-16 (UCF)/Sthapana/2008-09 dated 31st July, 2008, and as a result thereto, the Uttarakhand Cooperative Federation has remitted the gratuity amount for 4 years of services amounting to Rs. 38,418/- and earned leave amount for 104 days' amounting to Rs.58,268/- totaling to Rs.96,686/-

65. The petitioner had submitted that at the time when the said amount was being remitted by the Uttarakhand Cooperative Federation to the late father of the petitioner, the said correspondence was already forwarded to the U.P. Cooperative Federation, settling their liability for the period of 11th July, 1985 to 31st December, 2004, wherein, a determination was made on the basis of the last pay certificate of 31st July, 2008, where a gratuity amount was assessed to be paid for 19 years of

services as Rs.1,82,488/- and earned leave for 184 days, amounting to Rs. 1,03,089/- totalling to Rs. 2,85,577/-, when the same has not been remitted till date, the petitioner has filed the present Writ Petition.

66. In this Writ Petition, the respondent Nos. 1 and 2, i.e. U.P. Cooperative Federation, have filed a counter affidavit on 13th April, 2021, but yet again, a very evasive reply has been given without there being a specific denial made by them to the correspondences made by the Uttarakhand Cooperative Federation determining the entitlement of the petitioner for being remitted with the retiral benefits. Not even that, in the tabulation of 13th November, 2010, the respondents had observed that an amount of Rs. 1,15,459/- has been remitted by them vide their letter No. 2631 dated 1st October, 2021 through cheque No. 002793 dated 4th October 2010, but still, if the said amount, which has been shown to have been remitted is taken into consideration in the light of the communication which was made by the Uttarakhand Cooperative Federation on 31st July 2008, determining the balance amount of gratuity and leave encashment, that does not commensurate with the actual entitlement of the retiral benefits to the late father of the petitioner, hence the present Writ Petition.

67. In Writ Petition 1828 of 2020, Narendra Singh Negi Vs. Uttarakhand State Cooperative Federation Ltd. and others, this writ petition too happens to be a second Writ Petition. The petitioner who was appointed with the respondent as a Munim in the District Office of the U.P. Cooperative Federation, Muzaffarnagar, had been discharging his services from his initial date of appointment w.e.f. 04.04.1973, and since the retiral benefits was not remitted, he had earlier preferred a Writ Petition, which was allowed by the judgement of 8th July 2010. Despite of it, the amount was not paid, hence the petitioner had to prefer a Contempt Petition, being Contempt Petition 125 of 2011, in which, notices were issued by the Coordinate Bench of this Court on 21st May, 2011, and as a result thereto, the respondent No. 3 to the Writ Petition i.e. U.P. Cooperative Federation had paid a gratuity amount of Rs.1,46,227/- and earned leave amount of Rs. 39,039/- by an order of 21st June, 2011.

68. The petitioner has contended that this aforesaid alleged compliance of remittance of the amount after filing of the Contempt Petition and on issuance of notices on it, do not satisfy the actual entitlement, which was assessed to be made payable by the Uttarakhand Cooperative Federation, since he had attained the age of superannuation on 30th June, 2008, having retired from the post of Junior Assistant after merger of his services, hence, in accordance with the Memorandum of Understanding dated 6th November, 2004, his retiral benefits were protected under Section 54 of the Reorganization Act, and hence, the respondent Nos. 1 and 2 vide their letter dated 10th July, 2008, had written to the respondent Nos. 3 and 4, i.e. U.P. Cooperative Federation for remittance of the benefit for the period from 04.04.1973 to 1st October, 2002, but the same was not remitted, hence, the petitioner has preferred the present Writ Petition contending thereof, that the petitioner's claim would stand squarely covered by the earlier judgements rendered in Writ Petition 738 of 2014, which was disposed of by the Co-ordinate Bench on 25th February, 2015, wherein, the Coordinate Bench has specifically laid down that the remittance of the gratuity amount and the earned leave has had to be made by the U.P. Cooperative Federation on the basis of the last pay certificate which had been issued by the Uttarakhand Cooperative Federation and the Coordinate Bench vide its judgement of 25th February, 2015, had imposed a compensation of Rs.3,000/- to be made payable

to each of the petitioners of the Writ Petition No. 738 of 2014.

69. Aggrieved against the said judgement of the learned Single Judge dated 25th February, 2015, the U.P. Cooperative Federation preferred a Special Appeal No. 137 of 2015, which too was dismissed by the Division Bench of this Court vide its judgement of 3rd July, 2017 and later on their SLP too, had been dismissed by the Hon'ble Apex Court, vide its judgement of 2nd March, 2020. Hence, the petitioner contended, that in view of the principles laid down by the aforesaid judgements, he would be entitled for the remittance of the retiral benefits, as it has been detailed by the petitioner in para 13 of the Writ Petition, which is extracted hereunder :-

U.P. P.C.F. 04-04-1973 to 01-10-2002 Due Drawn/paid Balance Gratuity Rs.
3,50,978/- Rs.1,46,227/- Rs.2,04,751/- (25 years) Earn Leave Rs.94,908/-
Rs.39,039/- Rs. 55,869/-

70. The necessity for this Court to deal with each of the specific cases in these bunch of Writ Petitions became inevitable for the reason being, that factually, and on account of the subsequent developments, which had taken place after the judgements rendered by this Court in Writ Petition No. 448 of 2018, Chandra Mohan Arora Vs. Uttarakhand State Cooperative Federation Ltd. and others, as decided on 29th November, 2019 and the judgement as rendered in Special Appeal No. 137 of 2015 as decided on 3rd July, 2017, and the consequential decision of the Hon'ble Apex Court in SLP (C) No. 5914 of 2020, as decided on 27th August, 2020, and thereafter, the judgements which had been later rendered even by this Court, following undisputed facts and law, which emerges for consideration was that the principles of these judgements referred above would be equally made applicable in case of each of the petitioners for the purposes of remittance of their retiral benefits, which is otherwise protected by Section 54 of the Reorganization Act, which is extracted hereunder:-

"54. Pensions. - The liability of the existing State of Uttar Pradesh in respect of pensions shall pass to, or be apportioned between, the successor States of Uttar Pradesh and Uttaranchal in accordance with the provisions contained in the Eighth Schedule to this Act.

71. The implications of Section 54 of the Reorganisation Act, 2020, has had to be read with the provisions contained under Section 74 of Part VIII of the Reorganization Act, wherein in its 1st proviso, it had provided that as a consequence of the enforcement of the provisions of the Reorganization Act, the services of the employees working with the State or the Corporations created under the Statute, on their merger of services, their service conditions cannot be put to a detriment to their interest and they cannot be placed at a disadvantage position, which they would have been otherwise be entitled to receive, had the State not being bifurcated due to the political and legislative reasons and since their interest was statutorily protected, they would have been entitled for the grant of retiral benefits under the protection which had been legally provided under Section 54 to be read with the proviso to Section 74 of the Reorganization Act.

72. On the basis of the above scrutiny, the following facts emerges for consideration :-

i. The admitted fact in all the above Writ Petitions, are that the petitioners or in some of the cases the predecessors of the petitioners, admittedly, had been initially inducted into the services of the U.P. Cooperative Federation.

ii. It is an admitted fact, that as a consequence of the creation of the State of Uttarakhand with effect from 9th November, 2000, an independent Cooperative Federation for the State of Uttarakhand came into existence with effect from 01.01.2005 and the services of the employees, who were enlisted in the Memorandum of Understanding arrived at between the Secretaries of the two Cooperative Federations of the State of UP and State of Uttarakhand or even otherwise too, their services stood merged with the Uttarakhand Cooperative Federation with effect from 1st January, 2005.

iii. It is further an admitted case of the parties to the Writ Petitions, that all the petitioners, as a consequence of merger of their respective services after having satisfactorily completing their tenure of service have attained the respective age of superannuation, as detailed and discussed above, which as per the entitlement, under the relevant service rule applicable to the Federations, they were entitled to receive the gratuity amount, as well as the leave encashment amount and as well as the arrears of the benefit of the pay commission etc. iv. It is an admitted case of all the parties to the Writ Petitions that on their attaining the age of superannuation from Uttarakhand Cooperative Federation, the Uttarakhand Cooperative Federation had issued a last pay certificate in their favour, which had not been disputed at any stage by U.P. Cooperative Federation, which has had to be taken as to be a foundation for the purposes of determination of their retiral benefits, as per the principles, which was laid down by the judgement as rendered in Writ Petition No. 738 2014, Rajendra Singh and others, decided on 25th February, 2015, which had attained finality with the dismissal of Special Appeal No. 137 of 2015, and the SLP too which stood dismissed on 2nd March, 2020, meaning thereby, eventually, in all the cases, for any tenure of service, whether which was rendered with the U.P. Cooperative Federation or after the merger of services with the Uttarakhand Cooperative Federation, the gratuity, earned leave and other retiral benefits, were mandatorily required to be determined based on the undisputed last pay certificate which were issued in favour of the retired employees, i.e. the petitioners of these bunch of writ petitions.

v. It is further an admitted case and also as would be apparent from the respective counter affidavits which had been filed by the Uttarakhand Cooperative Federation, as well as the U.P. Cooperative Federation, that so far as the tenure of respective services rendered by the petitioners in Uttarakhand Cooperative Federation is concerned, the petitioners are not in quarrel, pertaining to the remittance of the amount of gratuity and leave encashment, as it has been determined to be made payable and paid by the Uttarakhand Cooperative Federation, based on the last pay certificate issued in favour of the respective petitioners.

vi. It is further not in controversy and rather apparent from records, which have been uniformly adhered to by the Uttarakhand Cooperative Federation, that when they had determined the total financial implications, pertaining to the entitlement of the petitioners to receive the gratuity and earned leave encashment, and while making the payment of their shares, the Uttarakhand

Cooperative Federation; has simultaneously also recommended, to the U.P. Cooperative Federation in relation to each retired petitioner, for making the payment after determination of the amount made by the Uttarakhand Cooperative Federation, for the period of services, which the petitioners have rendered, from their initial date of appointment with the U.P. Cooperative Federation, till their respective date of merger of their services with the Uttarakhand Cooperative Federation.

vii. It is further not in dispute and rather settled too, by now by the decision taken by the Division Bench of this Court, that the total entitlement of an employee of U.P. Cooperative Federation of the amount payable to them towards the gratuity, earned leave and other retiral benefits, that has had to be proportionally apportioned based on the tenure of services rendered with the erstwhile U.P. Cooperative Federation, and in relation to the tenure of services which had been rendered with the Uttarakhand Cooperative Federation and each of the respective Cooperative Federation of the two States, would have to be bear their share of liability, based on the tenure of services rendered by the employees with them.

viii. It is not in controversy and rather settled too upto the Hon'ble Apex Court that for either of the tenure of services rendered, either in Uttarakhand Cooperative Federation or in the U.P. Cooperative Federation, the determination of the retiral benefits, has had to be made on the basis of the last pay certificate drawn in favour of an employee on attaining of their age of superannuation and the U.P. Cooperative Federation, cannot take the last pay drawn certificate by an employee as it existed on the date of merger of his or her services with the Uttarakhand Cooperative Federation, as to be the yardstick for determining the gratuity and earned leave encashment for the period of services rendered prior to the merger of the services by their employees with the Uttarakhand Cooperative Federation.

73. The necessity for this court to deal with this aspect in relation to each of the respective cases and petitioners therein became necessary because despite of their being a consistent litigation for decades together and despite of the fact, that the controversy was not res integra, any more before any court of law, after the judgement of the Hon'ble Apex Court, still the U.P. Cooperative Federation, based upon their own wisdom and whims, had not appropriately remunerated the retired employees, with their actual entitlement of amount of gratuity and earned leave encashment, hence the dispute arose from the following perspectives:-

a) Since the U.P. Cooperative Federation was not remitting the retiral amount based upon the last pay certificate, which was issued by the Uttarakhand Cooperative Federation, on their attainment of age of superannuation, the petitioners have sought a writ of mandamus, that the respondents, i.e. U.P. Cooperative Federation, may be directed to determine the gratuity amount and earned leave encashment and other retiral dues payable to them, based upon the last pay certificate even for the period of services rendered by them with the U.P. Cooperative Federation, when it was not being done, by the U.P. Cooperative Federation, hence the Writ Petitions.

b) The dispute arose when the U.P. Cooperative Federation, according to the factual detailed as it has already discussed above, had partially paid the amount and partially

they have denied to remit the amount on the pretext that since the liabilities between the two Federations are yet to be settled based on the Memorandum of Understanding, and a balance amount of 2.27 crores is yet due to be settled, then only the amount would be remitted, in fact, this issue too was dealt by the Division Bench of this Court wherein, it was observed that the retired employees under any administrative circumstances, cannot be made to suffer in any manner whatsoever, even if there happens to be any dispute between the two Federations, in settlement of their assets and liabilities, which is exclusively a distinct issue, to the benefits benefits, which has otherwise protected in favour of the employees, in the light of the provisions contained under Section 54 to be read with proviso of Section 74 of the Reorganization Act.

c) The issue would be and was also a bone of contention earlier, that the break of services; as a consequence of merger of their services with effect from 1st January, 2005, what would be its effect on continuity of services from the respective date of appointment, till the attainment of age of superannuation, of the employees whose services thus stood merged, when during the intervening period because of the political and the legislative decisions, the services of the petitioners have been rendered into two Federations, whether it would be treated to be a service in continuity for the purposes of settlement of the retiral benefits.

74. Owing to the aforesaid controversy, which has been raised and under a normal parlance and particularly, on a harmonious construction of Section 54, to be read with the proviso to Section 74 of the Reorganisation Act, this Court is of the view, that as a consequence of the creation of the Uttarakhand Cooperative Federation, due to the legislative implications of the Reorganisation Act, I am of the view, that the services of the petitioners or their predecessors, would be treated to be a service in continuity, from their respective date of their initial appointment with the U.P. Cooperative Federation and its subsequent merger or their subsequent retirement from the Uttarakhand Cooperative Federation, logically too it cannot be taken as to be a snap or break in service of the employees for the purposes of determination or calculation of their respective retiral benefits, because that has been protected under the proviso to Section 74, as well as Section 54 of the Reorganization Act. Hence the said period of services from the date of inductment in the U.P. Cooperative Federation, till the date of respective retirement from the Uttarakhand Cooperative Federation after merger of their services, it would be treated, as to be a uniform service in continuity for the grant of all service benefits to the employees, which they would have been otherwise entitled to in accordance with law, had the two Cooperative Federation were not created as a consequence of creation of State of Uttarakhand.

75. The argument which had been extended by the U.P. Cooperative Federation, that they cannot be fastened upon to pay the retiral benefits, by determining it on the basis of the last pay certificate which had issued by the Uttarakhand Cooperative Federation, on the respective date of attainment of age of superannuation of the employee, because that liability cannot be harnessed upon them and they would be only liable to remit the retiral benefits, based upon the last salary drawn by the respective employees on the date of merger of the services, is an argument which is not acceptable

by this Court for the reason being, that this issue has already been laid to rest by the judgment of the Division Bench of this Court as rendered on 3rd July, 2017, which later on was affirmed by the Hon'ble Apex Court on 2nd March, 2020.

76. Hence, this Court too is of the view that the last pay certificate as issued by the U.K. Cooperative Federation, which is the foundation for the calculation of the retiral benefits, in fact, it was an imposed circumstances, which was peculiar in nature due to the creation of State. As far as the decision to create a State or to divide the two Federations of the State of U.P. and State of Uttarakhand is concerned, in fact, the employees were not at all instrumental in it, and in that eventuality, the cumulative benefits, which would have accrued to an employee, had Federations being not bifurcated, as a consequence of the creation of the State of Uttarakhand, the petitioner would be entitled to for the determination of the retiral benefits based on the last pay certificate which had been issued in their favour on the date of attainment of their respective age of superannuation. This analogy further stands protected under the provision to Section 74 of the Act, to be read with its proviso.

77. For the aforesaid reasons, all these bunch of Writ Petitions, stand allowed qua the U.P. State Cooperative Federation, since there is no dispute pertaining to that the Uttarakhand Cooperative Federation has already remitted the amount, based on the last pay certificate which had been issued by them, no writ of mandamus is required to be issued for the Uttarakhand Cooperative Federation. As far as the U.P. Cooperative Federation is concerned, a following writ of mandamus is issued:

1. That U.P. Cooperative Federation would ensure to determine the gratuity, earned leave, and the arrears of interest payable on the withheld amount under Section 7 (3A) of the Payment of Gratuity Act, for the period of services which has been rendered by the respective petitioners with the UP State Cooperative Federation, based on the last pay certificate which had been issued by the Uttarakhand Cooperative Federation. It is hereby made clear, that the inter se dispute between the two Cooperative Federations, based upon the terms of the memorandum of understanding, which has been at times depicted in the counter affidavit filed by the U.P. Cooperative Federation, this Court is of the view that looking to the respective age of the retired employees, their terms of settlements will not create any impediment in the remittance of the retiral benefits, because all these issues have already been settled by the judgments of the Division Bench referred above.

Any dereliction on that pretext would be contemptuous too.

2. Hence the U.P. Cooperative Federation is hereby directed to pay the gratuity, earned leave and other retiral benefits, along with the statutory interest payable on it under Section 7 (3A) and at the rate as decided by the Division Bench, for the period of services rendered by the petitioners with the U.P. Cooperative Federation, based on the last pay certificate issued by the Uttarakhand Cooperative Federation, and the U.P. Cooperative Federation, is directed to remit the amount within a period of two months from the date of the production of the certified copy of this judgement.

3. The U.P. Cooperative Federation, is hereby directed to report back compliance of the judgment, within one month from date of delivery of the judgment.

4. It is further, as a measure of precaution, it is observed that if any amount has already been remitted by the U.P. Cooperative Federation to any of the petitioners, the same would be accordingly adjusted while making the final payment to the retired employee, based on their respective last pay certificate.

78. Subject to the aforesaid observations, the Writ Petitions stand allowed qua the U.P. Cooperative Federation. However, there would no order as to cost.

(Sharad Kumar Sharma, J.) 28.01.2022 Shiv