

Neutral Citation No. - 2023:AHC:203755

AFR

Reserved on 03.05.2023

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Case :- WRIT - A No. - 18197 of 2021

Petitioner :- U.P. Lekhpal Sangh Through Its Treasurer Vinod Kumar Kashyap

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- S.K. Srivastava, Kailash Nath Singh, Sr. Advocate

Counsel for Respondent :- C.S.C.

With

Case :- WRIT - A No. - 42840 of 2015

Petitioner :- Pramod Kumar Srivastava And 50 Ors.

Respondent :- State Of U.P. And 2 Ors.

Counsel for Petitioner :- Siddharth Khare, Ashok Khare

Counsel for Respondent :- Govt. Advocate

With

Case :- WRIT - A No. - 18159 of 2021

Petitioner :- Ankur Chowdhary And Anothers

Respondent :- Principal Secretary, Revenue Govt. Of U.P. And 3 Others

Counsel for Petitioner :- S.K. Srivastava, Sr. Advocate

Counsel for Respondent :- C.S.C.

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Case :- WRIT - A No. - 4660 of 2021

Petitioner :- Vikas Sachan And 47 Others

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Krishnaji Khare, Shashibind Kumar Srivasatava

Counsel for Respondent :- C.S.C.

Hon'ble Saral Srivastava, J.

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Kailash Nath Singh, learned counsel for the petitioner and Sri Neeraj Tripathi, learned Additional Advocate General assisted by Sri Shashank

Shekhar, learned Additional Chief Standing Counsel for the respondents.

2. Since the controversy involved in the aforesaid writ petitions are identical, therefore, all writ petitions are being decided together with this common judgement.

3. For convenience, the facts are being delineated from Writ-A No. 18197 of 2021.

4. The petitioners by means of the present writ petition have prayed for the following relief:-

“I. Issue a writ, order or direction in the nature of mandamus directing the respondents to treat the petitioner Nos.3 to 8 and similarly situated other Lekhpals whose selection and training were completed in the Session year 2003-04 upto August, 2004, prior to 01/04/2005 on the date enforcement of New Pension Scheme and same may be treated as governed by the Old Pension Rules.

ii. Issue a writ, order or direction in the nature of mandamus directing the respondents to make a regular deduction towards General Provident Fund (under Old Pension Rules) instead of deduction in terms of new Pension Scheme regularly every month from the salary of the petitioners.

iii. Issue any other suitable writ order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case to meet the end of justice.

iv. Award the cost of the writ petition to the petitioners.”

5. The facts in brief are that petitioner no.1 is an organisation of the Government of Uttar Pradesh Employees (hereinafter referred to as 'Sangh') posted in the revenue department on the post of Lekhpal. The petitioner no.2 being Treasurer has been authorised by the Sangh to file the present writ petition. The petitioners nos.3 to 8 are also members of the Sangh and are working as Lekhpal in different districts and are entitled to the relief prayed for in the writ petition.

6. The post of Lekhpal is a Non-Gazetted Subordinate Service (Group-C) post and comes under the revenue department. The service conditions of the Lekhpal are governed by the U.P Lekhpal Service Rules, 1958 (hereinafter referred to as 'Rules, 1958').

7. It appears that the Board of Revenue wrote a letter to the District Magistrates of different districts to make the appointment for the post of

Lekhpal. In pursuance of the said letter, the District Magistrates started selection proceedings and issued an advertisement in respect to their districts. An Advertisement No.492/7-Bhulekh dated 04.02.1999 was issued by the District Magistrate, Shahjahanpur inviting applications for selection for recruitment against 32 posts of Lekhpal in District Shahjahanpur. Similarly, the District Magistrate, Jaunpur issued an Advertisement No.636/7-Bhulekh dated 27.02.1999 for recruitment against 97 posts of Lekhpal in District Jaunpur. The District Magistrate, Baghpat by advertisement dated 18.06.2002 invited applications for recruitment on 14 posts of Lekhpal in District Baghpat. The petitioners being eligible and qualified, submitted application for being considered for appointment on the post of Lekhpal.

8. The written examination for selection for the post of Lekhpal was conducted on 05.11.2000 in district Shahjahanpur; on 07.05.2000 in district Jaunpur and on 23.10.2001 in district Baghpat. The petitioners passed the physical test. The final result of the selection in district Shahjahanpur was declared on 24.10.2001. Further case of the petitioners is that after the selection was finalised in the year 2001, petitioners were not permitted to join for undergoing training for the post of Lekhpal on account of the stay order granted by the Apex Court in Writ Petition (Civil) No.488 of 2001 (Akhil Bhartiya Chatra Yuva Berojgar Front Vs. State of U.P.) under Article 32 of Constitution of India wherein a challenge was raised in respect to U.P. Public Service (Reservation for Schedule Castes, Schedule Tribes and Other Backward Class) Act, 1994 (hereinafter referred to as 'Act, 1994'). The State Government on account of the stay order by the Apex Court in the aforesaid writ petition kept in abeyance the selection proceedings. Later on, the State Government rescinded the amendment made in the Act, 1994 and restored the position of the said act as it stood before the amendment. Consequently, the writ petition before the Apex Court became *infructuous* and stood dismissed.

9. After the dismissal of the Writ Petition (Civil) No.488 of 2001 by the Apex Court, the State Government issued a Government Order dated

12.04.2003 directing the concerned authorities to finalise the selection proceedings which had already been initiated.

10. In compliance with the Government Order dated 12.04.2003, the Commissioner and Secretary of the Board of Revenue issued a Circular dated 01.05.2003 addressed to District Magistrates of all the districts for concluding the selection proceedings which had already been undertaken. The said letter further directed the concerned District Magistrate to complete the selection proceeding/interview and declare the final result so that the selected candidates may take admission by 22.05.2003 and be sent for training.

11. The said letter further recited that in those districts where written examination in respect to selection on the post of Lekhpal was held in December 2001, but due to some unavoidable circumstances, their interview and fitness test were not conducted, it should be completed by 15.05.2003 and the result be declared so that the selected candidates should take admission by 22.05.2003.

12. In compliance with the said letter, the Additional District Magistrate (Finance & Revenue), Baghpat issued an order dated 05.05.2003 in respect of his district directing the selected candidates to take admission in Lekhpal Training School, Sahanpur, Bijnor by 22.05.2003.

13. The petitioners took admission and participated in the training session 2003-04 in their respective Lekhpal Training Schools. They completed their training in the year 2004 and the written examination of the Lekhpal Training was held in August 2004, but their result was not declared. However, the result of Lekhpal Training was declared on 17.05.2005. After the declaration of the result, the petitioners were issued appointment letters between June 2005 to July 2005. The petitioners and other Lekhpals joined the post of Lekhpal immediately after getting the appointment letters.

14. In the meantime, the State Government issued a notification dated 28.03.2005 notifying a New Contributory Pension Scheme to be effective from 01.04.2005. The State Government pursuant to the

aforesaid notification issued another notification titled 'U.P Retirement Benefits (Amendment) Rules, 2005 (hereinafter referred to as 'Rules, 2005') dated 07.04.2005 amending the U.P Retirement Benefit Rules, 1961 (hereinafter referred to as 'Rules, 1961').

15. By Rules 2005, sub-rule 3 has been added in Rule 2 of Rules, 1961 which states that any appointment made after 01.04.2005 shall be governed by the New Pension Scheme. Consequently, petitioners, who have been selected pursuant to the advertisement in the year 1999 & 2000, have been placed under the New Pension Scheme as they have been issued appointment letters after 01.04.2005.

16. The grievance of the petitioners is that though the selection process for appointment to the post of Lekhpal commenced with the publication of notification in the years 1999 & 2000, but because of the apathetic and lackadaisical approach of respondents, the inordinate delay of more than five years had occurred in completing the selection process which was concluded after 01.04.2005 causing serious prejudice to the petitioners as they have been placed under the New Pension Scheme whereas if the selection process had been concluded expeditiously within a reasonable time, the petitioners would have been placed under the Old Pension Scheme. Therefore, petitioners can not be penalised for the inaction on the part of respondents in taking the exorbitant time of more than five years to conclude the selection by placing them under the New Pension Scheme rather they are entitled to be placed under the Old Pension Scheme.

17. The petitioners have also placed a notification dated 17.02.2020 issued by the Central Government giving the option to its employees to opt either for Old Pension Scheme or New Pension Scheme in cases where the selection for appointment was finalised before 01.01.2004, but they joined the Government service on or after 01.01.2004. The petitioners also placed one more notification along with the rejoinder affidavit issued by the Central Government dated 03.03.2023 whereby the Central Government gave an option to its employees who were recruited against the posts/vacancies advertised/notified for recruitment

on or before 22.12.2003 to either opt for Old Pension Scheme or New Pension Scheme.

18. The respondents have filed a counter affidavit contending *inter-alia* that the Government of U.P. issued a Gazette dated 28.03.2005 whereby it adopted the New Contributory Pension Scheme of the Government of India in place of the Old Pension Scheme. The New Contributory Pension Scheme came into effect from 01.04.2005 for the employees of the State Government. The petitioners were selected as per the provisions of Rules, 1958 which provides for source and procedure of recruitment. It is stated that petitioners joined their duties after 01.04.2005, and therefore, they are covered under the New Contributory Pension Scheme and are not entitled to the benefit of the Old Pension Scheme. It is further stated that since at the time of appointment of petitioners, the New Contributory Pension Scheme came into effect from 01.04.2005 in pursuance to the Government Order dated 28.03.2005, therefore, no deductions were made from the salary of petitioners towards General Provident Fund (GPF). It is further stated that as the petitioners have been allotted Index Number/PRAN Number, therefore, they are entitled to the benefits of the New Pension Scheme.

19. The respondents also stated that the selection of Lekhpal was made in the year 2001 on the basis of the notification published in the year 1999-2000 by the Board of Revenue in the light of provisions of Rules, 1958. It is further stated that the services of the Lekhpal were pensionary services under the provisions of Rules, 1958. Further case of the respondents is that the training programme of the Lekhpal was issued vide Board's Letter No.12183 dated 03.12.2001 which was to commence from 01.01.2002. However, on account of the stay order passed by the Apex Court with respect to the reservation in the recruitment of Group-C vacancies, the training programme of the Lekhpal was kept in abeyance by the Government Order dated 29.08.2003.

20. Subsequently, the restriction imposed on recruitment was removed by the Government Order dated 15.01.2004, and in pursuance to the said Government Order, the Board of Revenue opened the Lekhpal Training Centers. Thereafter, the candidates selected by the District Magistrate were given admission to Lekhpal Training Centers on 01.11.2004. After successful completion of one year training, the proceedings were initiated as per the rule for grant of appointment to those candidates who passed the examination after training.

21. It is further stated that the Finance Department vide notification dated 07.04.2005 introduced Rules, 2005 whereby Rule 2 of Rules, 1961 was amended by including sub-Rule 3 after sub-Rule 2 and it was provided that the benefit of Old Pension Scheme will not be applicable on the recruitment made after 01.04.2005. Since the petitioners have been appointed after 01.04.2005, therefore, they are covered under the New Contributory Pension Scheme.

22. It is further stated that keeping in view the demands made by the Lekhpal 'Sangh', the Board vide letter dated 16.06.2016 requested the Government to sympathetically consider the case of those Lekhpals under the Old Pension Scheme, who were selected before implementation of New Pension Scheme, but the result of their training was declared on 30.05.2005. The Government, thereafter, informed the Board about the order of the finance department vide letter dated 12.06.2017 that the demand of the Lekhpal Sangh for the Old Pension Scheme was not acceptable.

23. The Board, thereafter, again by letter dated 13.11.2017 requested the Government to revisit its decision. Thereafter, the matter was referred to the Karmik Department on 06.09.2019, but the Karmik Department desired to seek the opinion of the finance department in this regard. Subsequently, the matter was referred to the finance department for its opinion on 26.11.2019. However, the finance department did not agree to grant the benefit of the Old Pension Scheme to the Lekhpals on the ground that the training period of the Lekhpal before the regular

appointment cannot be counted for pension. Accordingly, it is stated that petitioners have failed to make out any ground calling for interference by this Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

24. The petitioners have filed a rejoinder affidavit denying the averments in the counter affidavit and reiterated the averments made in the writ petition.

25. In the rejoinder affidavit, petitioners further stated that the Board by letter dated 03.12.2001 scheduled the training programme. However, the Board based on the Government Order dated 21.12.2001 issued a letter dated 27.12.2001 to postpone the training scheduled due to some legal impediment. It is further stated that the training schedule was re-fixed in compliance with the Board's letter dated 01.05.2003 on 05.05.2003. According to said schedule, the training was to commence from 01.06.2003 to 31.07.2004. The petitioners denied the fact averred in the counter affidavit that the training school was reopened on 01.11.2004 on the basis of the Government Order dated 15.01.2004. The petitioners stated that this training programme was related to the special backlog recruitment of the Lekhpal for the session 2004-05 which has no concern with the recruitment of petitioners.

26. Sri Ashok Khare, learned Senior Counsel for the petitioners has contended that advertisements were issued in the years 1999 & 2000 in respect of the specified post of Lekhpal, and the selection process commenced in the year 2000, and the final select list was declared in the year 2001, therefore, the selection was completed in the year 2001. However, in the meantime, there was an interim order of the Apex Court due to which petitioners were not sent for training despite the declaration of the result, therefore, the delay in sending the petitioners to Lekhpal Training Centre was not attributable to the petitioners, and they cannot be made liable to suffer for such delay.

27. It is further contended that the stay order of the Apex Court stood discharged in the year 2003, and consequently, the State Government issued a Government Order dated 12.04.2003 issuing directions for

finalising the selection proceedings which had already commenced, and in pursuance of the said Government Order, the Commissioner and Secretary, Board of Revenue issued a Circular letter dated 01.05.2003 addressed to the District Magistrate of all the districts to send the selected candidates for training in Lekhpal Training School. The said letter further provided 22.05.2003 as the cut-off date for completing the admission to U.P. Lekhpal Training School, and in case, a candidate could not take admission by 22.05.2003, the incharge of the said school considering the circumstances under which such a candidate could not take admission before the cut-off date may permit him to take admission, however, if a candidate could not take admission by 31.05.2003, his selection shall be cancelled.

28. Thus, it is submitted that once the Circular dated 01.05.2003 provided a cut-off date for admission and as per Rule 220 of U.P. Land Records Manual (hereinafter referred to as 'U.P. Manual'), the school term will commence on 1st of July of each year and end with the examination in the month of May following, therefore, the session of the petitioners, who took admission before 22.05.2003, commenced on 01.07.2003 and ended in the month of May following, therefore, the examination should have been conducted and result should have been declared as per Rules 220 & 223(vi) of U.P. Manual. Consequently, it is submitted that the delay in declaring the result was attributable to the inaction of the State Government which resulted in depriving the petitioners of a valuable right of pension which they would have got if the petitioners' training had been completed within the period prescribed in Rule 220 of U.P. Manual. Consequently, it is submitted that unjustified delay on the part of the State Government in completing the session beyond the term prescribed in Rule 220 of the U.P. Manual was attributable to the State, and for such fault of the State, petitioners cannot be denied their valuable right of pension.

29. It is further contended that Rule 223 (vi) of the U.P. Manual provides that selected examiners shall send the result sheets and answer books to the Collector concerned within a fortnight of the date of the

examination. The consolidated statement of the results of the examination shall be prepared by the President of the Committee and sent by the Collector to the Director of Land Records not later than one week after the result sheets are received from the examiners. Consequently, it is submitted that according to Rule 223 (vi) of the U.P. Manual, the scheme is provided to declare the result expeditiously within 15 days and in the instant case, the examination was conducted in August 2004 and the result was declared after April 2005 and appointment letters were issued in June and July 2005, and no justifiable reasons was given by the respondents in the counter affidavit for the delay in declaring the result of the examination, therefore, petitioners cannot be refused the benefit of Old Pension Scheme for the fault on the part of the State in delaying the declaration of the result of the examination.

30. It is further submitted that the New Contributory Pension Scheme was introduced w.e.f. 01.04.2005 by notification dated 28.03.2005 which is consistent with the contributory pension scheme formulated by the Central Government which was made effective from 01.01.2004, and the only difference between the scheme introduced by the Central Government and the State Government was that New Contributory Pension Scheme was introduced by the Central Government w.e.f 01.01.2004 whereas State Government introduced the said scheme w.e.f 01.04.2005.

31. It is submitted that the Central Government by notification dated 17.02.2002 relaxed the New Contributory Pension Scheme by extending the benefit of the Old Pension Scheme in cases of those employees, whose selection for appointment was finalised before 01.01.2004, but they joined the government service on or after 01.01.2004. The Central Government again by notification 03.03.2023 relaxed the New Contributory Pension Scheme and covered all those Central Government employees who were recruited against the posts/vacancies advertised/notified for recruitment on or before 22.12.2003. Thus, it is submitted that once New Contributory Pension Scheme introduced by

the State Government is in conformity with the New Contributory Pension Scheme introduced by the Central Government, and Central Government by notification dated 17.02.2002 and 03.03.2023 relaxed the New Contributory Pension Scheme and covered all those employees who were recruited against the posts/vacancies advertised/notified for recruitment on or before 22.12.2003, therefore, the petitioners are also entitled to the said benefit. Therefore, denial of the Old Pension Scheme to the petitioners, who were appointed in the vacancy advertised in the years 1999 & 2000 much before the introduction of the New Contributory Pension Scheme is an arbitrary exercise of power by the respondent which is hit by Article 14 of the Constitution of India.

32. Per contra, Sri Neeraj Tripathi, learned Additional Advocate General submits that the petitioners have raised the grievance and demanded the benefit of the Old Pension Scheme, but their claim was turned down in the year 2016 and again in the year 2017 as is evident from the notes of the department appearing at page 157 of the paper book and since petitioners have not challenged the same, they are estopped in law from claiming the benefit of Old Pension Scheme. It is further contended that the petitioners never raised any challenge to the delay in the declaration of result, and therefore, they have acquiesced to it by their conduct and it is not open to the petitioners to raise a challenge to the delay in declaring the result to claim the benefit of Old Pension by filing the present writ petition after inordinate delay.

33. It is further submitted that Rule 223 (vi) of the U.P. Manual does not prescribe for declaration of result within 15 days from the date of examination, and therefore, the argument of learned counsel for the petitioners based upon Rule 223(vi) is misconceived. He further submits that since the right to appointment accrues only after the petitioners got the certificate from Lekhpal Training School and the benefits of Service Rules would accrue to an employee after his appointment, and as admittedly, the petitioners had joined the service after 01.04.2005, therefore, all the benefits of service shall accrue to them after their joining, hence, they cannot be extended the benefit of Old Pension

Scheme as the New Contributory Pension Scheme was introduced w.e.f 01.04.2005. It is also submitted that it is stipulated in the appointment letter that the service of the petitioners shall be governed by the New Contributory Pension Scheme, and once they have not challenged it, they are estopped in law in challenging the same.

34. To the aforesaid submission, Sri Ashok Khare, learned Senior Counsel for the petitioners submits that though the Government has denied the benefit of the Old Pension Scheme to the petitioners earlier, but on the representation of the petitioner no.1-Sangh, the Government agreed to reconsider the same which is also evident from the various correspondence, and a decision with the approval of the Additional Chief Secretary (Revenue), State of U.P. (appended on page 167 of the paper book) was taken to refer the matter to the Finance Department to take the concurrence of finance department. Therefore, the petitioners did not need to challenge the rejection of their claim for the benefit of the Old Pension Scheme. He further submits that even otherwise, no order had been supplied to petitioners denying their claim for the Old Pension Scheme.

35. He further submits that there was no delay in filing the writ petition in claiming the benefit of the Old Pension Scheme as the petitioners would receive pension after their superannuation. He further submits that there is no stipulation in the appointment letters that petitioners shall be governed by the New Contributory Pension Scheme. Accordingly, it is submitted that contentions advanced by the learned Additional Advocate General are not sustainable in law.

36. I have considered the rival submissions of the parties and perused the record.

37. The facts that emanate from the record are that respondents published advertisements in the years 1999 & 2000 for recruitment against specified posts in the advertisement on the post of Lekhpal. The process of selection commenced in the year 2000 and the written examination was conducted in the year 2001, and results were declared in the year 2001. However, on account of the stay order passed by the

Apex Court, the process of selection was deferred by the State Government. After the discharge of the stay order of the Apex Court, the State Government issued a Government Order dated 12.04.2003 directing to finalize the selection process which had already commenced.

38. In compliance with the Government Order dated 12.04.2003, the Commissioner and Secretary, Board of Revenue issued a Circular letter dated 01.05.2003 addressed to the District Magistrates of all the districts to restart the selection process and admit the selected candidates in U.P. Lekhpal Training School for training. The cut-off date for admission provided in the letter dated 01.05.2003 was 22.05.2003. However, if a candidate could not join by 22.05.2003, the Incharge of the school may admit such candidate by 31.05.2003 on being satisfied that the candidate could not take admission before the cut-off date for bona-fide reasons. In case, a candidate could not join by 31.05.2003, his candidature shall be cancelled.

39. However, in the counter affidavit, it is averred in paragraph no.8 that the restriction imposed on the selection was removed by Government Order dated 15.01.2004 and in pursuance thereto, the Board of Revenue opened the Lekhpal Training Centers and gave admission to the candidates on 01.11.2004 and after successful completion of one year of training, the proceedings were initiated for appointing those candidates who had obtained the Lekhpal training certificate.

40. This Court may note the facts delineated in the counter affidavit about the removal of restrictions for admission in Lekhpal Training School on 01.11.2004 relating to the petitioners are incorrect inasmuch as if that be so, the training of petitioners would have been completed in October or November 2005 and petitioners would have been given appointment after November 2005. But in the instant case, the petitioners admittedly have been given appointments in June and July 2005. Therefore, the averments made in the counter affidavit about the lifting of restrictions on the selection and admission of petitioners in

Lekhpal Training School on 01.11.2004 are incorrect, more so when the respondents have not denied the assertion of petitioners in paragraphs nos.18 to 20 of writ petition that the State Government issued a Government Order dated 12.04.2003 directing to finalize the selection proceedings which had already been initiated, and in compliance with the Government Order dated 12.04.2003, the Commissioner and Secretary, Board of Revenue issued a Circular letter dated 01.05.2003 prescribing 22.05.2003 as the cut-off date for admission in U.P. Lekhpal Training School.

41. Now, in the light of aforesaid facts, this Court proceeds to analyse whether the action of the State Government in denying the benefit of the Old Pension Scheme to the petitioners is arbitrary and whether petitioners are entitled to be placed under the Old Pension Scheme.

42. Admittedly, the petitioners were selected and appointed as per the provisions of Rules, 1958 which was applicable at the time of appointment of petitioners. Rules 5, 6 of Rules, 1958 and Rule 7 of Rules, 1958 (as it stood before amendment) applicable to recruitment before 2006 relevant in the context of the present case are reproduced herein below:-

5. Source of recruitment.-(1) *Only such candidates as have obtained the Patwari or Lekhpal School Certificate and whose names have been brought on the list mentioned in Rule 6 shall be eligible for appointment to the service.*

2. *Notwithstanding anything contained in sub-rule (1), persons who belong to the category mentioned in paragraph 2 (3) (d) of Revenue (B) Department G.O. No.4434/B, dated April 27, 1953, and are working in a temporary or officiating capacity, with or without break in service, shall be deemed eligible for appointment to the service.*

(3). *The ex-patwaris who had a good record of service and fulfil other qualifications and conditions prescribed for appointment shall also be eligible for appointment to the service.*

(4). *Ex-patwaris shall be treated as new candidates and shall not get the benefit of their past service in any manner.*

(5). *Ex-patwaris who have already been absorbed in the service shall be deemed to have been appointed under these rules.*

6. Procedure for recruitment.-(1) *For purposes of recruitment, the Collector shall maintain in the following form a list of candidates who have passed the Patwari or Lekhpal School Examination:*

Serial No.	Name of candidate with percentage and residence	Date of birth	Educational qualification
1	2	3	4

Year of passing the Patwari or Lekhpal School Examination	Total No. of marks obtained in the Examination with Division	Dates of officiating periods with remarks about work	Remarks
5	6	7	8

(2). Necessary material for the maintenance of this list shall be supplied each year, as soon as examination results are out, by the Collector in whose district the Lekhpal School is located. The Collector may, subject to the approval of the Director, add to the list so received the name of any other candidate who has passed the Patwari of Lekhpal School Examination.

(3). The names, in the list shall be arranged in order of seniority as determined by the year of examination. Seniority as between the candidates of the same year shall be judged on the basis of the aggregate marks obtained at the examination. Where the aggregate marks are equal, the seniority shall be determined on the basis of age.

(3-A). A district-wise list of ex-patwaris fulfilling the conditions laid down in sub-rule (3) of Rule 5 shall be maintained by each Collector. The names in this list shall be arranged according to the length of service. If the length of service of two or more ex-patwaris is the same the names shall be arranged according to age.

Note-If any list is already maintained in this behalf under executive orders of Government it shall be deemed to be maintained under this sub-rule.

(4). The lists referred to the examination and the Collector shall remove the names of-

- (a). Candidates who have received permanent appointment;
- (b). Other candidates for good and sufficient reasons to be recorded in writing;
- (c). Those candidates in the list prescribed in sub-rule (3) of Rule 6 who have exceeded the maximum age-limit for appointment.

7. Appointment:-(1) Whenever posts of Lekhpal fall vacant, the Assistant Collector shall appoint thereto alternatively the senior-most candidate on each of the two lists maintained under rule 6. In case no candidate is available in the relevant list, the Assistant Collector may make the appointment from the other list:

Provide that the Assistant Collector may pass over any name or names for good and sufficient reasons to be recorded in writing:

Provided further that any person aggrieved by any order passed by the Assistant Collector under the first proviso may prefer an appeal before the Collector whose decision thereon shall be final.

(2). If a candidate does not accept the appointment, when offered, shall be passed over, and the next candidate in order of seniority shall be appointed. The candidate so refusing shall not be considered for appointment in any subsequent vacancy unless he furnishes good and sufficient reasons for his refusal to the satisfaction of the Assistant Collector. Any person aggrieved by the order passed by the Assistant Collector, may prefer an appeal before the Collector, whose decision thereon shall be final.

(3). When a district is under settlement or record operations or under operations for consolidation of holding, the Settlement or Record Officer or the Settlement Officer of the Consolidation, as the case may be, make a temporary appointment against a permanent vacancy pending the appointment of a permanent Lekhpal by the Assistant Collector.”

43. According to Rule 5 (1) of Rules, 1958, only such candidates who have obtained Patwari or Lekhpal School Certificate and whose names are in the list mentioned in Rule 6 shall be eligible for appointment to the service. So a candidate to be eligible for appointment should possess the Lekhpal School Certificate and his name should also appear in the list mentioned in Rule 6 of Rules, 1958.

44. Rule 6(1) of Rules, 1958 prescribes a form in which the list of candidates who have passed the Patwari or Lekhpal School Examination each year shall be maintained. Under sub-rule 2, the necessary material for the maintenance of the list under Rule 6(1) shall be supplied each year, as soon as the examination results are out by the Collector in whose district the Lekhpal School is located. The Collector may subject to the approval of the Director, add the name of any candidate in the list who has passed the Patwari or Lekhpal School Examination.

45. Rule 6 (3) provides for the method of arranging the names of candidates. According to said rule, the list shall be arranged in order of seniority as determined by the year of examination. The seniority between the candidates of the same year shall be judged on the basis of aggregate marks obtained in the examination, and if aggregate marks obtained by candidates are equal, the seniority shall be determined on the basis of age.

46. Rule 7(1) of the Rules, 1958 provides that the Assistant Collector shall appoint alternatively the senior most candidate from each of the two lists maintained under Rule 6 on the post of Lekhpal.

47. Now, at this stage, it would be apt to reproduce the relevant rules of the U.P. Manual to appreciate the scheme of examination of U.P. Lekhpal School:-

213. Application for admission-(1) *The following procedure should be followed for making selection of suitable candidates for admission to the Lekhpal Schools:*

(i). One month before the fixed date, i.e., March 31, the District Officer must give due publicity to the fact that applications are invited for admission to Lekhpal School, stating therein clearly the term of training and emoluments which will be admissible to them on appointment to the post thereafter and the date of which the application should reach the District Officer. The notice must also state that 18 per cent of the seats are reserved for Scheduled Caste candidates.

Note.- Until the percentage of Scheduled Caste candidates in the district reaches 18, 36 per cent of the seats shall be reserved for them.

(ii). Publicity to the notice should be given by the following methods:

(a) Notices should be placed on the notice boards of the tahsils, other offices under the administrative control of the State Government and Collectorates.

(b). Notices should be published in local newspapers and periodicals brought out by Planning Department of the District.

(c). Copies of the notice should be sent to all (Bhulekh Nirikshak) and Panchayat Inspectors in the districts for publicity.

(iii). The Collector shall make the selection of candidates for admission to the Lekhpal School on the basis of a competitive examination in the following subjects including viva voce:

- | | |
|-------------------------------|---------------------|
| <i>(1). Hindi Essay</i> | <i>: 100 Marks.</i> |
| <i>(2). Arithmetic</i> | <i>: 50 Marks</i> |
| <i>(3). General knowledge</i> | <i>: 50 Marks</i> |
| <i>(4). Endurance Test</i> | <i>: 100 Marks</i> |
| <i>(5). Viva Voce</i> | <i>: 100 Marks.</i> |

(iv). Successful candidates will also be required to submit themselves for medical examination by a Medical Officer.

(v). Preference in admission shall be given to those who are bona fide residents of rural areas.

(2). The Collector shall by the middle of May report to the Commissioner of the Division in the appended form the number of candidates selected by him. On receipt of this information from all the districts in the division, the Commissioner will communicate the list of candidates to be trained in the Lekhpal School of his division in good time to the District Officer concerned before the commencement of the sessions.

(3). The Director may, in case the number of candidates at a particular School is too large, arrange for the training of some of them at another school.

(4) (a). Eighteen per cent of the candidates selected for admission to a

Lekhpal School shall be one of the Scheduled Castes provided that only such of the Scheduled Caste candidates shall be selected as are judged by the Collector to be fit for admission to the School. If in any year all the vacancies reserved for the Scheduled Castes candidates cannot be filled for lack of suitable candidates, the deficiency shall be made good next year, if suitable candidates are available. But this practice shall not be carried forward for more than two years at a time.

(b). The maximum age limit for the Scheduled Caste candidates shall be greater by five years than in the case of candidates not belonging to Scheduled Castes.

Form of Collector's Report

Name of District	Cadre of Lekhpals in the district	Average number of annual vacancies likely to occur in next year	Number of passed candidates in the district	Number of candidates selected for admission	Remarks.
1	2	3	4	5	6

220. Term- The School term will commence on the 1st of July each year and end with the examination in the month of May following. Scholars, whether previously in the School or not, may be permitted to join the class only during the first fortnight of the term. Special cases may be referred to the Commissioner of the Division for orders.

221. Examination- The examination shall be held in the month of May every year on dates which will be fixed by the Director. No scholar shall be admitted to the examination who has not attended on 75 per cent of the days on which the School has been open since the last examination, or, if admitted after the commencement of the session, since his admission to the School. In the latter case he must have attended on not less than 150 days in the aggregate, provided that the Director may, in very special cases, condone a deficiency of not more than nine days in the period of minimum attendance.

223. Conduct of examination.-(i) The President shall be responsible for the proper conduct of the examination, and the drawing up of the result sheet for the complete examination. Printed question papers will be supplied by the Director and the answers to these will be examined and marks awarded by the examiners selected by the Director from a list to be maintained by him. The examination in survey shall be conducted either by the President himself or under his supervision by the other member of the Committee or the extra officer appointed under paragraph 222 (ii). Practical examination in Planning and Development shall be conducted by a Gazetted Officer nominated by the Examination Committee.

(ii). For the written examination, the President shall have a chart prepared showing the seating arrangement of the candidates in the examination hall. This chart shall be kept on the file relating to the examination.

(iii). The President shall have authority to expel from the examination hall any candidate who is found copying or allowing others to copy or who commits any other act or misconduct relating to the examination. Such candidates shall be debarred from appearing in that subject as

well as in subsequent papers, if any.

(iv). *If any examiner detects copying on the part of one or more candidate he shall report the matter to the President who after scrutiny of the answer-books may declare any of them to have failed in the examination.*

(v). *For awarding grace marks to any candidate, the Committee should submit its recommendations to the Collector, who is authorised to allot grace marks up to a total of 5 to a candidate who fails in not more than two subjects. If there is any special case of hardship, the Collector may recommend to the Director for extending the concession of grace marks beyond five.*

(vi). *The selected examiners shall send the result-sheets and the answer-books to the Collector concerned within a fortnight of the date of the examination. The consolidated statement of the results of the examination shall be prepared by the President of the Committee and sent by the Collector to the Director not later than one week after the result-sheets are received from the examiners. The Director may call for the answer-books, and either revise the marking or ask the examiner or the Committee to reconsider it. The answer-books shall be kept for six months from the date of the acceptance of the results by the Director. In case orders have not been received from the Director by the commencement of the next term the candidates who have been declared by the Committee to have failed should, subject to paragraph 226, be required to rejoin the School in anticipation of the order of the Director.*

48. The argument of Sri Ashok Khare, learned Senior Counsel appearing for the petitioners mainly hinges upon the fact that once the selection process had started in the year 1999-2000 by publishing the advertisement inviting applications for the specified number of posts for appointment on Lekhpal, the delay of about six years in completing the selection process and appointing the petitioners with inordinate delay was not on account of any fault of the petitioners, but was solely on account of lethargic and inactive approach of the State Government for which the petitioners shall not be penalised and they cannot be denied the benefit of Old Pension Scheme for the fault of the respondents.

49. At this stage, this Court proceeds to refer to the judgements relied upon by the learned counsel for the petitioners in support of the aforesaid submission.

50. In the case of *Firangi Prasad Vs. State of U.P. & Others, 2010 SCC Online All. 2219*, the appellant-Firangi Prasad claimed his regularisation under the provisions of Section 33-C of the U.P. Secondary Education Services Selection Board Act, 1982 (hereinafter

referred to as 'Act, 1982'). The District Inspector of Schools was empowered to hold the selection for appointment of the teacher on ad-hoc basis under the Act, 1982. The appellant was selected in a selection held by the District Inspector of Schools on 05.01.1993. The appellant was appointed against the substantive vacancy on ad-hoc basis in terms of the relevant provisions and his selection and appointment was duly notified to the management vide order dated 18.01.1993. The appellant approached the management along with the order dated 18.01.1993, but the management refused to issue a letter of appointment and did not allow the appellant to join the institution. The appellant made several complaints and ultimately, on 25.08.1993 the management issued a letter of appointment allowing the appellant to join on 26.08.1993. Thereafter, the appellant had been continuously functioning in the institution. Under Section 33-C incorporated w.e.f. 20.04.1998 in the Act, 1982, there is a stipulation in Section 33-C(1)(a)(i) that a person who has been appointed on or after May 14, 1991, but not later than August 6th, 1993 on ad-hoc basis against substantive vacancy in accordance with Section 18 in the Lecturer grade or the Trained Graduate grade would be eligible to be considered for regularisation.

51. The claim of the appellant for regularisation was rejected on the ground that since he was appointed on 25.08.1993 on ad-hoc basis which was after the cut-off date provided under Section 33-C(1)(a)(i) of the Act, 1982, therefore, the appellant could not be regularised.

52. The appellant approached this Court by filing the writ petition which was dismissed by the Writ Court by order dated 02.04.2010. Against the order of the Writ Court, the appellant preferred Special Appeal Defective No.1007 of 2010. The Appellate Court while allowing the special appeal of the appellant held that respondents/state by their inaction can not deprive a candidate of his or her legitimate right to claim continuance in service. Paragraphs 18 to 24 of the said judgement are reproduced herein below:-

“18. The second contention needs to be examined in the light of the facts that have emerged from the record, namely that the appellant for no fault on his part was kept out of the Institution by the inaction of the

Management in spite of the District Inspector of Schools having despatched the selection order on 18.01.1993. From the facts on record, it is evident that the Manager of the Institution had to perform the ministerial act of issuing a letter of appointment to the appellant in terms of the selection order dated 18.01.1993. The Management admittedly complied with it after much persuasion on 25.08.1993, for which the appellant is nowhere at fault. On the contrary, the appellant had been continuously approaching the Management time and again expressing his willingness to join the Institution.

19. In these circumstances, teachers like the appellant fall within an altogether different class of candidates, who have been wrongfully prevented by the inaction of the Management in joining the Institution. The Management has to perform only a ministerial act and by its inaction, it cannot defeat the legitimate claim of a teacher like appellant.

20. The direction contained in the order dated 18.01.1993 was categorical to allow the appellant to join within ten days, which admittedly was scuttled by the Manager for reasons best known to him.

21. The Manager is obliged to issue a letter of appointment under the direction of the District Inspector of Schools, who is the competent authority under the Rules. Any unwarranted defiance and in the absence of any infirmity in the selection of the appellant, such inaction of the Management cannot be of any disadvantage to the appellant or to any such teacher belonging to this class.

22. The respondents cannot by their inaction, therefore, deprive a candidate of his or her legitimate right to claim continuance in service. It is, therefore, clear that there was a deliberate delay on the part of the Management in issuing the letter of appointment in the present case and accordingly, the right of the appellant to claim continuance under the selection order dated 18.01.1993 cannot be denied. The appellant will, therefore, be entitled to the benefits flowing out of the order dated 18.01.1993 and in such a situation, the letter of appointment will relate back prior to the cut-off date i.e. 06.08.1993.

23. This, in our opinion, would be the correct interpretation of law in relation to the candidates who have been wrongfully prevented from receiving their letters of appointment for no fault of theirs.

24. Having concluded so, we, therefore, hold that the appellant was entitled for the benefit of regularisation in the circumstances narrated above and accordingly, the conclusion drawn by the learned Single Judge to refuse the mandamus cannot be sustained.”

53. In the case of **Mahesh Narayan and Others Vs. State of U.P. & Others** (Writ-A No.55606 of 2008) decided on 19.12.2019, this Court granted the benefit of Old Pension Scheme to the petitioners where requisition for appointment of Junior Engineer (Civil), Irrigation Department was sent by the State of U.P. to the Uttar Pradesh Public Service Commission (hereinafter referred to as 'Commission') notifying 954 posts of Junior Engineer (Civil) to hold selection. In the Notification, it was mentioned that the posts are pensionable. The Commission after receiving the requisition, published the advertisement

on 22.12.2000 inviting application for the aforesaid post. The last date for submission of the form was 27.01.2001. The petitioners appeared in the selection and got selected. However, on account of the stay order passed by this Court, the selection process could not be completed. Subsequently, the stay order was modified by this Court in Special Appeal No.485 (S/B) of 2001 (U.P. Public Service Commission Vs. State of U.P. and Others) by order dated 19.12.2001 permitting the respondents to declare the result of selection provisionally subject to the final decision of the writ petition. However, after the dismissal of the writ petition, the result was declared on 05.10.2005 and interviews were held between 21.11.2005 to 12.01.2006 and the final list of selected candidates was published on 12.03.2006. This Court by placing reliance upon the judgement of this Court in the case of ***Firangi Prasad (supra)*** and the judgement of Delhi High Court in the case of ***Government of National Capital Territory of Delhi & Others Vs. Ajay Kumar & Others*** in Writ Petition (C) No.838 of 2016 & CM Appl. No.3656 of 2016 allowed the writ petition and extended the benefit of the Old Pension Scheme to the petitioners.

54. The State of U.P. preferred a Special Appeal Defective No.117 of 2021 against the judgement of this Court passed in the case of ***Mahesh Narayan (supra)*** which was dismissed by this Court by judgement dated 19.02.2021. The relevant extract of the said judgement is reproduced herein-below;-

*"The issue aforesaid has been factually discussed by the learned Single Judge by referring to the judgment of this Court in the case of **Satyesh Kumar Mishra and others vs. State of U.P. and others, 2016(6) ADJ 808 (LB)** and so as the judgment of Delhi High Court in the case of **Naveen Kumar Jha vs. Union of India and others**, decided on 02.11.2012. Para 3 to 16 of the said judgment are quoted hereunder:*

"3. The Staff Selection Commission invited applications to fill up posts of Sub-Inspector in Central Para Military Forces and titled the selection process as , SSC Combined Graduate Level 2000". The petitioner applied and took the examination. He cleared the written examination as also the Physical Efficiency Test.

4. Required to appear before a Medical Board for fitness to be ascertained, the petitioner was declared medically unfit as per medical examination conducted on February 04, 2002. Since the procedures of the law entitled the petitioner to seek a re-medical examination by being brought before a Review Medical Board and for which he had to file an

appeal within 30 days of unfitness being intimated, on February 25, 2002 the petitioner submitted the necessary appeal. Unfortunately, for him he heard nothing from the respondents on the subject i.e. the date and the place where petitioner was required to be present to be re-examined by the Review Medical Board and in the meanwhile the candidature of others was processed. It was only on January 18, 2003 that the petitioner was intimated to be present before the Review Medical Board and the petitioner duly presented himself before the Board and upon examination was declared fit. By March 2003 others who were successful had joined the respective Para Military Force to which they were allocated to. The petitioner was called for interview on July 2003 and thereafter having cleared the interview was issued letter offering appointment as a Sub-Inspector in CRPF in April 2004. The petitioner thereafter successfully completed the induction training and was attached to the 72nd Bn.CRPF.

5. The problem which the petitioner has highlighted is of not only being placed junior to the entire batch which joined CRPF pursuant to the SSC Combined Graduate Level 2000 Examination but even junior to those who took the SSC Combined Graduate Level 2001 and SSC Combined Graduate Level Examinations held thereafter; the petitioner being placed at the top of the list of the 2004 year batch.

6. This has affected the petitioner adversely because Sub-Inspectors of his batch have earned promotions to the rank of Inspector and are being considered for further promotion to the post of Assistant Commandant.

7. Though the petitioner has earned promotion to the post of Inspector but even in said rank has lost out in seniority and right to be considered along with his batchmates for promotion to the post of Assistant Commandant.

8. Another injury suffered by the petitioner is the change in the policy of the Central Government to do away with old Pension Scheme which automatically made eligible all those who joined Central Government prior to December 31, 2003. The petitioner has been held entitled to the new Pension Scheme.

9. With respect to the Pension Scheme it assumes importance to note that petitioner's batchmates were issued letters offering appointment in March 2003 and had petitioner likewise been issued a letter offering appointment, he too would have been a member of the old Pension Scheme. As a result of petitioner being offered employment in April 2004, he has perforce been made a member of the new Pension Scheme.

10. On the subject of delay in conducting Review Medical Boards, in the decision dated May 26, 2011 deciding WP(C) No.5400/2010 Avinash Singh vs. UOI & Ors., a Division Bench of this Court held, in para 17 to 20 as under:-

"17. It is settled law that if appointment is by selection, seniority of the entire batch has to be reckoned with respect to the merit position obtained in the selection and not on the fortuitous circumstance on the date on which a person is made to join.

18. We highlight in the instant case the fortuitous circumstance of the petitioners being made to join as Assistant Commandant on 08.08.2005 is not the result of anything created by the petitioners but is a result of a supine indifference and negligence on the part of the ITBP officials.

19. Thus, petitioners would be entitled to their seniority as Assistant Commandant with respect to their batch-mates in the context of the

merit position in the select panel. We make it clear, the seniority as Assistant Commandant of the entire batch would be a reflection of the merit position in the select list and not the date of joining.

20. It is trite that where a thing is deemed to come into existence everything which logically flows therefrom has to be followed and the imagination cannot boggle down. In other words, the effect of the petitioners' seniority being reckoned with reference to the select panel would mean that the petitioners would come at par with their brethren who joined on 02.11.2004. Since their brethren were granted 1 year qualifying service relaxation, petitioners would be entitled to the same benefit and additionally for the reason the next below rule requires that if a person junior in the seniority position acquires the necessary qualifying service, the person above has also to be considered for promotion."

11. On facts it needs to be noted that the seven petitioners of WP(C) No.5400/2010 had lost out on their seniority with reference to their merit position in the Select List due to delay in conducting their Review Medical Evaluation and in the interregnum their batchmates had joined ITBP.

12. On parity of reasoning and application of law the petitioner is held entitled to his seniority being refixed as a Sub-Inspector in CRPF with reference to his merit position at the SSC Combined Graduate Level 2000 Examination i.e. those who joined CRPF pursuant to the said examination in March 2003. The petitioner has already earned promotion to the post of Inspector and accordingly we direct that he would be entitled to seniority refixed in said rank with reference to his revised seniority position in the rank of Sub-Inspector, and this would mean that the petitioner would be considered for promotion to the post of Assistant Commandant as per the revised seniority list.

13. The respondents are therefore directed to revise the seniority position of the petitioner in the two ranks within a period of four weeks from today and thereafter consider the petitioner along with other eligible persons for promotion to the post of Assistant Commandant.

14. As regards wages, on the principle of not having shouldered responsibility for the higher post, we do not direct backwages to be paid.

15. On the subject of the petitioner being entitled to the old Pension Scheme, in similar circumstances, deciding WP(C) No.10028/2009 Amrendra Kumar vs. UOI & Ors., where the petitioner therein was also similarly deprived the opportunity to join with his batch on account of delay in conducting medical re-examination, the Court had directed that said writ petitioner would be entitled to the benefit of the old Pension Scheme which remained in force till December 31, 2003.

16. The petitioner would be entitled to similar benefit and accordingly the next mandamus issued is by way of a direction to the respondents to treat the petitioner as a member of the pension scheme which remained in vogue till December 31, 2003."

55. Against the order passed in Special Appeal Defective No.117 of 2021, the State of U.P. preferred Special Leave to Appeal (C) No.8195 of 2021 which was also dismissed by the Apex Court by judgement dated 28.02.2022. The judgement of the Apex Court reads as under:-

“Upon hearing the counsel the Court made the following

ORDER

Having heard learned counsel for the parties, we are not inclined to interfere with the order passed by the High Court in the peculiar facts of this case. The Special Leave Petition is, accordingly, dismissed. However, the question of law is kept open.

Pending application(s), if any stands disposed of accordingly.”

56. In the case of ***Kamlesh Kumar Sonakar and Others Vs. State of U.P. and Others*** (Writ-A No.55607 of 2008) an advertisement for recruitment of 361 vacancies of Junior Engineer (Civil), Irrigation Department (Special Recruitment) was published on 31.12.2002 and the last date for submission of application form was 27.01.2003. After completion of the selection process, the Commission vide communication dated 08.12.2004 forwarded the select list to the State Government for appointment. Thereafter, the State Government issued appointment letters to the candidates. Some candidates were issued appointment letters before 01.04.2005 while others were issued after 01.04.2005. The petitioners in the said case were given the appointment on 30.03.2005 and they submitted their joining after 01.04.2005. The petitioners were denied the benefit of the Old Pension Scheme. They approached this Court seeking the benefit of the Old Pension Scheme. This Court again by placing reliance upon the Division Bench judgement of this Court in the case of ***Firangi Prasad (supra)*** and judgement of Delhi High Court in the case of ***Inspector Rajendra Singh Vs. Union of India 2017 SCC Online Del. 7879*** affirmed by the Apex Court directed the respondents to extend the benefit of the Old Pension Scheme to the petitioners.

57. The State of U.P. preferred Special Appeal Defective No.116 of 2021 against the judgement of this Court in Writ-A No.55607 of 2008 which was dismissed by the Appellate Court by judgement dated 19.02.2021. Paragraphs 7 to 9 of the said judgement are reproduced herein below:-

“7. The issue for consideration is, as to the applicability of the new pension scheme which came into force since 1.4.2005, or to give effect to the old pension scheme to the petitioners/ non-appellants as they were given appointment prior to 01.4.2005. The case of the petitioners /non-

appellants is that they were given appointment letter on 30.3.2005, thus would be entitled for the benefit of old pension scheme as the date of joining is immaterial.

*8. The issue aforesaid has been factually discussed by the learned Single Judge by referring to the judgment of this Court in the case of **Satyesh Kumar Mishra and others vs. State of U.P. and others** 2016(6) ADJ 808 (LB) and so as the judgment of Delhi High Court in the case of **Inspector Rejendra Singh vs. Union of India** 2017 SCC Online Del. 7879. We do not find any error in the judgment. It is not only the date of appointment is relevant but candidate lower in merit out of same selection are governed by the old pension scheme because appointments and joining were given from time to time before even 01.4.2005 thus appellant cannot be deprived from the same benefits. The judgments on the issue has been discussed by the learned Single Judge.*

9. In Special Appeal Defective No.117 of 2021 (State of U.P. and 2 Others vs. Mahesh Narain and 2 others) vide order of date, similar view has been considered by the Division Bench of this Court.”

58. In the case of **Bageshwari Prasad Srivastava and Others Vs. State of U.P. and Others** (Writ-A No.28543 of 2013) decided on 11.10.2022, this Court allowed the writ petition and quashed the order dated 03.09.2012 by which petitioners were denied the benefit of Old Pension Scheme. In the said case, petitioners were employees of Bhadohi Woolen Limited a unit of Uttar Pradesh Textile Corporation Ltd., Bhadohi. The said unit fell in loss resulting in retrenchment of petitioners. Subsequently, a resolution dated 18.05.1996 was passed by the U.P. Textile Corporation Limited Bhadohi recommending the absorption of the petitioners against suitable Class-III and Class-IV posts under government employment. When no action was taken on the said resolution, the petitioners approached this Court by filing a writ petition which came to be disposed off by this Court directing the authorities to decide the claim of petitioners for absorption.

59. The claim of the petitioners was rejected by order dated 28.04.1998 which was challenged by the petitioners by filing Writ Petition No.17195 of 1998. The said writ petition was allowed by this Court by judgement dated 29.04.1999 directing the authorities to absorb the petitioners against the Class-III and Class-IV posts commensurate to the qualification possessed by the individual petitioners.

60. The State Government challenged the judgement dated 29.04.1999 in Special Appeal No.540 of 1999 which came to be

dismissed by the Special Appeal Court by the judgement dated 29.11.2001. The State of U.P. preferred Special Leave Petition No.5379 of 2002 which was also dismissed by the Apex Court by judgement dated 18.03.2002, yet the respondents did not absorb the petitioners.

61. The petitioners preferred the contempt petition and thereafter, petitioners came to be absorbed and appointment letters were issued on 09.04.2005. However, petitioners were denied the benefit of the Old Pension Scheme by order dated 03.09.2012. While setting aside the said order in Writ-A No.28543 of 2013, this Court observed as under:-

“Once the State respondents are found to have delayed the proceedings, in entirety, they cannot be permitted to wriggle out of the consequence of delay. In fact, sufficient discretion has already been exercised in favour of the State respondents inasmuch as upon showing compliance by issuance of appointment letters to the petitioners, the contempt proceedings appear to have been dropped, at that stage.

In view of the above, in the peculiar facts of the present case, it is found the right to be absorbed arose to the petitioners not on 09.4.2005 when the appointment letters came to be issued but on 29.4.1999 when the writ Court issued a positive direction in that regard. In any case, that right got vested on 18.3.2002 when the Special Leave Petition filed by the State against the decision of the Intra Court Appeal No.540 of 1999 (dated 19.11.2001) came to be dismissed. Three years was much more than the time actually required to give effect to the order of the Supreme Court. Accordingly, the petitioners must be treated to have been absorbed, notionally on 18.3.2002. Hence, they are entitled to pension under Old Pension Scheme.”

62. The State of U.P. preferred Special Appeal No.176 of 2023 against the judgement of this Court passed in Writ-A No.28543 of 2013 which was dismissed by the Appellate Court by judgement dated 29.03.2023. The relevant extract of the judgement dated 29.03.2023 is reproduced herein below:-

“No doubt, under the new pension scheme notified by the Government on 28.03.2005 it is specifically provided that from 1.04.2005, the new defined contribution pension scheme would mandatorily apply to all new recruits to the service of State Government and State Controlled Autonomous/State Aided Private Educational Institutions. The employees covered by the existing pension scheme, whose service would be less than 10 years on 1.04.2005, have also been given option to opt for the new pension scheme in place of the existing pension scheme.

No doubt, the appointment letter of the petitioners is dated 9.04.2005 and they joined in pursuance thereof on or before 20.04.2005, but it is an admitted fact on record that the direction of the Writ Court for absorption of the respondents against Class III and IV posts was issued on 29.04.1999. The special appeal filed by the State Government was

dismissed on 29.11.2001 followed by dismissal of the SLP on 18.03.2002. The State Government had no justifiable reason with it to withhold the absorption and issuance of appointment letters to the respondents. The respondents were compelled to initiate contempt proceedings against the State and whereafter, appointment letters were issued to them on 9.04.2005. In the aforesaid background, the learned Single Judge has rightly held that the stand taken by the State for denying the benefit of old pension scheme to the respondents did not merit acceptance as valuable right to being appointed accrued in their favour atleast after dismissal of the SLP. The learned Single Judge has rightly directed the State to treat the respondents to have been absorbed in service notionally on 18.03.2002, the date on which the issue relating to their absorption in Government Service was finally settled by the Supreme Court.”

63. In the case of **Inspector Rajendra Singh (supra)**, the petitioners challenged an order dated 06.02.2016 whereby respondents denied the petitioners the benefit of the Old Pension Scheme on the ground that they joined the service after the introduction of the New Contributory Pension Scheme after 01.01.2004. In the said case, an advertisement was issued by the Staff Selection Commission inviting applications for recruitment for the post of Sub-Inspector in the Border Security Force (BSF), Central Industrial Security Force, Central Reserve Police Force and Indo-Tibetan Border Police Force. The petitioners appeared in the written examination held on 12.01.2003. They qualified in the written examination whereupon they were asked to appear for the physical efficiency test. The petitioners appeared in the physical efficiency test which they qualified for. Thereafter, they appeared for the medical examination in which they were found medically unfit by the Medical Board. The petitioners got themselves medically examined in other reputed medical institutions where they were declared medically fit.

64. The petitioners, thereafter, applied for re-medical examination by a Review Medical Board. While the appeals of the petitioners for re-medical examination before the Review Medical Board were pending, the Staff Selection Commission published the results of all selected candidates. The candidates selected for the CRPF, CISF and ITBP were issued appointment letters and they joined before 31.12.2003. On 28.12.2003, the petitioners were directed to appear before the Review Medical Board. All the petitioners were declared fit. Thereafter, petitioners were issued letters dated 17.03.2004 to appear for interview

before the Staff Selection Commission on 22.04.2004. The petitioners were provisionally issued appointment letters on 17.03.2005 after delay of another 11 months on the part of the Staff Selection Commission. The Delhi High Court quashed the impugned order denying the Old Pension Scheme to the petitioners by placing reliance upon the judgement of **Naveen Kumar Jha (supra)** decided on 02.11.2012 and **Avinash Singh Vs. Union of India** decided on 26.05.2011. Relevant paragraphs of the judgement of **Inspector Rajendra Singh (supra)** are reproduced herein below:-

“13. Having regard to the facts and circumstances of this case, where advertisements for recruitment to the posts of Sub Inspectors in CAPFs were issued in November, 2002, written examinations were held on 12.01.2003, Physical Efficiency Test had been held in or before April, 2003, and the petitioners appeared before the Medical Board between April, 2003, to June, 2003, and declared fit upon medical re-examination by Review Medical Board in December, 2003, it would be grossly unjust and arbitrary to deny the petitioners the benefit of the Old Pension Scheme, applicable at the time when the posts were advertised, only because of the fortuitous circumstance of their joining service after the enforcement of the New Pension Scheme, for reasons not attributable to them.

14. As observed above, the authorities concerned took six months' time to decide the appeal against the decision of the Medical Board, declaring the petitioners medically unfit. The petitioners were found fit by other Medical institutions of repute and ultimately found fit by a Review Medical Board constituted by the respondent authorities themselves on 28.12.2003. The respondent authorities unnecessarily delayed constitution of a Review Medical Board. Had the respondent authorities and in particular Staff Selection Commission acted with diligence, the petitioners could have been appointed within 31.12.2003.

.....*.....*

18. In our view, basic terms and conditions of service, such as the right to receive pension upon superannuation, as applicable at the time of notification of the posts, cannot later be altered to the prejudice of the incumbents to the post, after commencement of the selection process.

.....*.....*

23. The issue of whether Sub Inspectors similarly circumstanced, as the petitioners, who had been cleared in medical examinations in 2003, but issued with appointment letters and joined the BSF in 2004 or 2005, could be denied pensionary benefits under the old pension scheme, which ended on 31.12.2003, was decided by a Division Bench of this Court in WP(C) No.5830/2015 (Shoorvir Singh Negi Vs. Union of India and others) heard with five other writ petitions.

24. By a judgment and order dated 17.09.2015, the Division Bench held:-

"As far as the claim for pensionary benefits based upon the old pension scheme which ended on 31.12.2003 is concerned, we are of the opinion that a somewhat different result would have to follow. Undoubtedly, all the petitioners were declared medically

fit by 2003. However, they would not be issued with appointment letters and joined subsequently in 2004 or 2005. It is here that the observations in Avinash Singh (supra) quoted with approval in Naveen Kumar Jha (supra) become relevant. Although the petitioners were declared fit earlier - at least much before the cessation of the old pension rules, there was an administrative delay in the issuance of the appointment letter asking them to join training. In these circumstances, in the interest of justice, we hold that they should be entitled to the benefits of the old pension scheme."

.....*.....*

27. The respondents have filed counter affidavit to the writ petition, wherein it is stated that the new pension scheme was introduced with effect from 01.01.2004 vide Government of India Notification dated 02.12.2003. Offer of appointment to other BSF Sub Inspectors appointed through the same examination were issued during the month of December, 2003, that is before commencement of new pension scheme, without mentioning the condition of new pension scheme, whereas, the petitioners herein were issued offers of appointment mentioning the condition that the new restricted defined contributory pension system would be applicable to them.

.....*.....*

39. It is well settled that relief under Article 226 of the Constitution of India is discretionary. When there is acquiescence and laches and delay in approaching this Court, discretionary relief might be declined. However, delay is no bar to entertaining writ petition. If entertaining a delayed writ petition entails the consequence of unsettling things already settled, relief may be declined. However, flagrant discrimination cannot be allowed to continue, only because of delay. Illegality must be redressed. In this case grant of relief would not result in unsettling things already settled. We are not inclined to reject the writ petition on the ground of delay."

65. The Union of India preferred Special Leave Petition (Civil) Diary No.39335 of 2017 against the judgement of the Delhi High Court in the case of **Inspector Rajendra Singh (supra)** which was dismissed by the Apex Court on 08.01.2018. The judgement of the Apex Court reads as under:-

"Upon hearing the counsel the Court made the following

ORDER

Delay condoned.

The Special Leave Petition is dismissed."

66. In the case of **Tanaka Ram and others Vs. Union of India & Others** decided on 12.02.2019, the Delhi High Court extended the benefit of the Old Pension Scheme to the petitioners. In the said case, petitioners applied for recruitment in the BSF under an advertisement issued by the office of DIG and Commandant, Training Centre and

School, BSF, Hazaribagh in August 2003 as well as Frontier Headquarters BSF, Rajasthan and Gujarat in November 2003. A notification was issued on 4th August 2003 by the Ministry of Home Affairs with the direction to the Director General, BSF to complete the entire process by 31st October 2003 so that selected candidates could be dispatched to their respective training centres before 15.12.2003 for their basic recruitment training which was to commence from 1st January 2004. The petitioners cleared the written test and medical exam in November 2003 however, they were issued call letters for joining only in February 2004. The Delhi High Court after considering the several judgements and also the fact that the Director General (BSF) accepted the judgement in the case of ***Parmanand Yadav Vs. Union of India*** by issuing an order dated 13.01.2016 extending the benefit of Old Pension Scheme to the petitioner-Parmanand Yadav and other similarly situated SI/DE selected through CPO Exam-2002 held that petitioners are entitled to the benefit of Old Pension Scheme.

67. The judgement of ***Tanaka Ram (supra)*** was also assailed by the Union of India before the Apex Court in Special Leave Petition (Civil) Diary No.25228 of 2019. The order of Apex Court dated 02.09.2019 reads as under:-

*“Upon hearing the counsel the Court made the following
ORDER*

Delay condoned.

The Special Leave Petition(s) is/are dismissed.

Pending application stands disposed of.”

68. This Court in the case of ***Parneet and Others Vs. State of U.P. and Others*** passed in Writ-A No.4191 of 2021 extended the benefit of the Old Pension Scheme to the petitioners, who were issued appointment letters on 08.02.2005 and were to submit their joining within 15 days. However, the State Government issued an order dated 09.02.2005 staying all further proceedings in respect of appointments. Later on, the State Government issued an order dated 28.11.2005 stating that there was no illegality in the selection process of petitioners, and

therefore, the directions were issued to ensure the joining of selected candidates. The petitioners, thereafter, joined, but they were denied the benefit of the Old Pension Scheme. This Court placing reliance upon the judgement of the Coordinate Bench of this Court in the case of ***Mahesh Narayan (supra)*** allowed the writ petition.

69. In Special Appeal Defective No.448 of 2021 (***State of U.P. and Others Vs. Shiv Kant Tiwari***), this Court affirmed the judgement dated 03.03.2020 of learned Single Judge. The relevant extract of the judgement is reproduced herein below:-

"The relevant facts have already been discussed above thus need not to be reiterated. The petitioner/non-appellant was appointed by the order dated 02.12.2005. It was after the judgement dated 03.03.2005 on a petition preferred by him in the year 1998. The question for our consideration is as to whether petitioner/non-appellant can be covered by Old Pension Scheme which was applicable for the appointee upto 01.04.2005. The issue in reference to it has already been decided by this Court in the case of Firangi Prasad and Kamlesh Kumar Sonkar (Supra). It has been held that candidates appointed out of one selection would be entitled for same benefit, if few candidates appointed prior to 01.04.2005 and others subsequent to it, they all would be governed by old pension scheme. The delay in issuing appointment order in favour of few candidates would not deprive them from same benefits as are given to those appointed before 01.04.2005 out of one recruitment. Applying the same analogy, the petitioner/non-appellant is also entitled to the benefit, as provided by learned Single Judge. It cannot be denied only for the reason that the State Government received the recommendation by the Commission after the judgement of this Court in the year 2005. The appointment of the petitioner/non-appellant is pursuant to the same recruitment to which appointment were given to others between the years 2001 to 2003."

70. Now this Court would analyse the judgements relied upon by the learned Additional Advocate General for the respondents.

71. The first judgement on which learned Additional Advocate General placed reliance is the case of ***Satyesh Kumar Mishra and Others Vs. State of U.P. & Others 2016 (6) ADJ 808 (LB)*** wherein this Court dismissed the writ petition of the petitioners, who under an Advertisement No.1 of 2002 published on 27.09.2002 applied for being considered for appointment as Assistant Teacher, and they were selected by U.P. Secondary Education Services Selection Board, Allahabad (hereinafter referred to as 'Board') after following the due procedure. The Board allocated colleges to the selected candidates including the

petitioners between November 2004 to December 2004. Thereafter, the District Inspector of Schools vide letter dated 13.12.2004 directed the Committee of Management of the concerned college allocated to the petitioners to issue appointment letters to the petitioners. However, letters of appointment were not issued as the Committee of Management of the respective colleges refused to issue appointment letters. Later on, appointment letters were issued to the petitioners on different dates after 01.04.2005. The petitioners in such backdrop, claimed the benefit of the Old Pension Scheme.

72. This Court in denying the benefit of the Old Pension Scheme to the petitioners noted in paragraph 25 of the judgement that *"Recruitment", "Advertisement", "Selection" and "Appointment" are different concepts under the service jurisprudence. "Recruitment" is the process of generating a pool of capable people to apply for employment in organization. Selection forms integral part of recruitment process, wherein from amongst eligible candidates, choice is made of person or persons capable to do the job as per the requirement. The process of selection begins with the issuance of advertisement and ends with the preparation of select list for appointment. "Appointment" is made, after selection process is over, issuance of letter in favour of selected candidates, is an offer to selected candidate to accept the office or position to which he has been selected. On acceptance of the terms and conditions of appointment, the selected candidates on joining has to be accepted as appointed, and he/she would be a new entrant and based on recruitment process, petitioner can not claim that she be brought within the scope and ambit of old pension rules in place of new pension rules. There is no dispute to the fact that process of selection was never altered and the entire selection was undertaken in accordance with the criterion which was laid down at the time of recruitment process. Therefore, assertion of the petitioner that the applicability of New Pension Scheme would amount to change in the terms and conditions of recruitment is untenable.*

73. Thereafter, this Court in paragraph 30 placed reliance upon the judgement of Apex Court in the case of ***Rakhi Ray and Others Vs. High Court of Delhi and Others 2010 (2) SCC 637*** and ***Vijoy Kumar Pandey Vs. Arvind Kumar Rai and Others 2013 (11) SCC 611*** and held that mere selection of a candidate does not give him the indefeasible right of appointment. This Court stated that empanelment at best is a condition of eligibility for appointment and by itself does not amount to create a vested right to be appointed. This Court on the analogy that the selection process contemplates four steps and mere selection of a candidate in the select list does not give him indefeasible or vested right to be appointed denied the petitioners the benefit of Old Pension Scheme because they joined after 01.04.2005. The same analogy has been adopted by this Court in the case of ***Ram Nakul Vs. State of U.P. and Others*** passed in Writ-A No.15392 of 2012 whereby this Court also denied the benefit of Old Pension Scheme to the petitioner whose process of selection was completed before the introduction of New Pension Scheme, and was issued appointment letter on 22.03.2005, but he was allowed to join on 19.04.2005 after the introduction of New Contributory Pension Scheme.

74. This Court again in the case of ***Ravi Raj and Others Vs. State of U.P. and Others 2020 (3) ADJ 408*** denied the benefit of the Old Pension Scheme to the petitioners who were selected in the year 2001. In the said case, the petitioners on account of ensuing litigation came to be appointed only in October 2006. While dismissing the writ petition, this Court placed reliance upon the judgement of this Court in the case of ***Ram Nakul (supra)*** in which this Court in paragraph 13 has considered the judgement of ***Satyesh Kumar Mishra (supra)***.

75. Thereafter, this Court noted the judgement of ***Satyesh Kumar Mishra (supra)*** in paragraph 16 and deliberated the law propounded in the judgement of ***Satyesh Kumar Mishra (supra)***. This Court further noticed judgement of the Division Bench of this Court in the case of ***Bharat Yadav Vs. State of U.P. & Others*** in Writ-A No.16838 of 2019 upholding the validity of amendment incorporated in Rules, 1961 which

provides that anyone who joins services of State after 01.04.2005 would not be entitled to the benefit of Old Pension Scheme under Rules, 1961.

76. Thereafter, this Court in paragraph 18 of the judgement has held that *'this Court is of the considered view that the key to answer the question posed lies in the language employed by Section 2(3) of the 1961 Rules. The decisions noticed above in light of the plain language employed in Rule 2(3) hold that it is only the date on which the incumbent joins service which is relevant for the purposes of adjudging his eligibility to the benefits of the Old or the New Pension Scheme. They also lay stress on the issue of joining and hold that it is that facet which would be determinative. It becomes pertinent to note that Satyesh Kumar Mishra, Ram Nakul and Bharat Yadav were all rendered prior to the judgment in Mahesh Narayan. However of these three decisions only Satyesh Kumar Mishra has been noted with the learned Judge observing that it was liable to be viewed as having been rendered per incuriam. Since Mahesh Narayan clearly proceeds to lay down a principle, which runs contrary to that enunciated in the three previous decisions rendered on the subject, it would be apposite to analyze that decision in some detail'*.

77. Thereafter, this Court proceeded to consider the judgement of **Mahesh Narayan (supra)** and held that the judgement of **Mahesh Narayan (supra)** did not notice the judgement of **Ram Nakul (supra)** and **Bharat Yadav (supra)**. Paragraph 20 of the judgement is reproduced herein below:-

“20. Having conferred thoughtful consideration on the various decisions that have come to be rendered on the subject, the Court firstly notes that Mahesh Narayan fails to notice Ram Nakul and Bharat Yadav. Both these decisions directly dealt with the issue of applicability of the Old and New Pension Schemes depending upon the date of entry into service of a particular candidate. These decisions clearly bound the learned Judge while proceeding to decide Mahesh Narayan. However they do not appear to have been brought to the attention of the Court. Both Ram Nakul and Bharat Yadav fundamentally rest and pivot on the statutory amendments as introduced in 2005 in the 1961 Rules. As noted above, Rule 2(3) introduces and constructs a specific injunction in respect of its applicability to employees "entering" services or posts on or after April 01, 2005. Guided by the plain language as used in that Rule, it is manifest that it does not connect the applicability of the Rules to either a selection

process commenced or pending or for that matter to any event prior to actual entry into service. In the considered view of this Court the expression "entering services..." cannot be equated to the selection or empanelment of an incumbent to government service. It is manifest that the applicability of the 1961 Rules is made dependent upon an incumbent actually being recognised as having become a member of the service on or before 1 April 2005. Viewed on its plain language it must be held, as this Court does, that entry into service alone would be determinative and since that event would occur only upon the issuance of an actual appointment letter and consequential joining it is these twin facets alone which would govern the issue of applicability of the Old or New Pension Scheme. Unless an incumbent is formally inducted into service, he cannot be viewed as having become a member thereof or a holder of a post. The expression "entering services or posts..." cannot be understood as referring to or hinging upon something inchoate or nebulous. Till such time as the incumbent accepts the offer of appointment and joins on the post, his position remains that of someone waiting at the threshold. It is only once he accepts the appointment, the terms and conditions stipulated therein and joins that he is ordained in service. In view of the aforesaid exposition the Court comes to conclude that the expression "entering" cannot be accorded any other interpretation."

78. This Court further in paragraphs nos. 21 to 23 elaborated the reasons why the judgement of ***Firangi Prasad (supra)*** relied upon by this Court in the case of ***Mahesh Narayan (supra)*** is not applicable in determining the question of applicability of the Old Pension Scheme or New Contributory Pension Scheme and held in paragraphs 24, 25, 26 and 27 as under:-

"24. However these pivotal and crucial aspects appear to have been ignored in Mahesh Narayan. The ex facie distinction between Rule 2(3) and Section 33C has clearly not been borne in mind. This perhaps because Rule 2(3) has not even been independently noticed by the learned Judge. The judgment in Firangi Prasad dealing as it did with the right of regularisation as conferred by Section 33C and the observations made in its backdrop cannot consequently be recognised as laying down a proposition on the basis of which Satyesh Kumar Mishra, Ram Nakul and Bharat Yadav may be said to have been incorrectly decided or be per incuriam.

25. The decision in Mahesh Narayan insofar as it seeks to draw sustenance from the judgments rendered by the Uttarakhand and Delhi High Courts also does not commend acceptance in light of the aspect which is noticed by the learned Judge in Bharat Yadav, namely, that in none of the decisions rendered by the two High Courts were provisions pari materia to Rule 2(3) shown to apply. On an overall conspectus of the aforesaid, the Court is of the considered view that insofar as the question that arises in this petition is concerned, it must be answered in light of the provisions made in the 1961 Rules and the decisions rendered in Satyesh Kumar Mishra, Ram Nakul and Bharat Yadav have rightly answered the issue by holding that incumbents appointed after 1 April 2005 cannot be recognised as being eligible to claim benefits of the Old Pension Scheme.

26. The Court additionally notes that the provisions of Rule 2(3) of the

1961 Rules are not assailed. The judgment therefore must necessarily proceed on the basis of that it is that provision alone which governs and must dictate the answer to the question posited. That Rule, as noted above, clearly refers to entry into service as being the determinative factor. None of the petitioners here are shown to have entered into service prior to 01 April 2005. The mere fact that the process of recruitment was initiated prior thereto can be of no assistance to their cause of being governed by the Old Pension Scheme.

27. The Court also bears in mind the decision of the Division Bench of this Court in Roop Chandra where it was held that a stipulation contained in an appointment order cannot be assailed or questioned after its acceptance. As noticed in the earlier part of this judgment the appointment letter of the petitioners had clearly stipulated that their appointment was to come into force upon their joining. It did not stipulate the appointment coming into effect from some retroactive date. That prescription in the order of appointment was duly accepted without demur or protest. It is not permissible for the petitioners to now and at this point of time to renege from that concession.”

79. In the case of ***Shaharoz Alam and Others Vs. State of U.P. and Others 2020 (10) ADJ 47***, this Court again dismissed the writ petition where the process of recruitment for the post of Constable commenced before the cut-off date, i.e., 01.04.2005 when the new pension scheme came into effect and appointment letters were issued to the petitioners after 01.04.2005. This Court in paragraphs nos. 22 to 25 of the judgement noted the reason that the law laid down in the case of ***Mahesh Narayan (supra)*** is based upon the facts in that case and it has no application in the facts of the present case. Thereafter, it proceeded to hold that the judgement of ***Satyesh Kumar Mishra (supra)*** is applicable and consequently, this Court upheld the decision of authorities to deny the benefit of the Old Pension Scheme.

80. In the context of the case in hand, the learned Additional Advocate General has placed reliance upon paragraphs 31, 32, 33, 34, 43 and 52 of the judgement of ***Shaharoz Alam (supra)*** which are reproduced herein below:-

“31. Similarly, there is mention of judgment of Allahabad High Court in case of Satyesh Kumar Mishra and others vs. State of U.P. and others, as reported in 2016(6) ADJ 808 (LB) where Lucknow Bench of Allahabad High Court referring to the judgment of Supreme Court in case of Sudhir Kumar Kansal Vs. Allahabad Bank as reported in 2011 (2) ESC 243 and also on case of Smt. Rakhi Ray and others Vs. High Court of Delhi and others as reported in 2010 (2) SCC 637 so also on case of Vijoy Kumar Pandey Vs. Arvind Kumar Rai and others as reported in 2013 (11) SCC

611 dismissed the petition filed by Satyesh Kumar Mishra and others wherein petitioners had sought direction to respondents to make necessary deduction towards G.P.F. etc. in view of old pension scheme, which was in existence at the time of notification dated 27.09.2002 issued by Secondary Education Service Selection Board, oblivious of the fact that petitioners had entered into service on 16.04.2005 after coming in effect of the new pension scheme.

32. Hon'ble Co-ordinate Bench recorded a finding in case of Sudhir Kumar Kansal (supra), to the effect that :-

"in a society governed by rule of law, sympathies cannot override the rules and regulations".

33. Similarly, in case of Rakhi Ray and others (supra) the Supreme Court in para 24 observed that :-

"a person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed."

34. In case of Vijoy Kumar Pandey (supra), the Supreme Court held that :-

"preparation of select list or panel does not by itself entitle the candidate whose name figures in such a list/panel to seek appointment or claim mandamus.

.....*.....*

43. In the light of decisions of Hon'ble Supreme Court starting from Rafiq (supra), P.S. Rao (supra) Bharat Petroleum Corporation Ltd., (supra) and Bhavnagar University (supra), I find myself sufficiently equipped to hold that under the facts and circumstances of the case, since facts of the present case are different from that of Mahesh Narayan (supra), Firangi Prasad (supra) and Ashok Kumar Singh and another (supra), this Court is of the opinion that in the light of law laid down by Supreme Court in case of Rakhee Ray and others (supra), Vijoy Kumar Pandey (supra) and Sudhir Kumar Kansal (supra) the facts of the judgments referred to in case of Ashutosh Joshi and others, Balwant Singh and others, Inspector Rajendra Singh, Government of National Capital Territory of Delhi, and also that from the cases of Naveen Kumar Jha, Paramanand Yadav, Avinash Singh, Amrendra Kumar, Shoorvir Singh Negi are distinguishable from the facts of the present case. In the present case, as has been discussed above, recruitment was initiated on 06.01.2005, results were declared on 23.04.2005 followed by the medical examination and document verification from 24.04.2005 and therefore, definitely appointment orders were issued after 24.04.2005 whereas the Rules of 2005 had become effective w.e.f. 01.04.2005 i.e., much before the date of declaration of even the results of the petitioner and therefore, there being no parity in case of the petitioners and also in the light of the settled law laid down in case of Roshan Lal Tandon vs. Union of India and others as reported in AIR 1967 SC 1889 wherein it has been held that while exercising the authority under Articles 309, 310 and 311 of the Constitution of India, the terms of service can be altered unilaterally by Government, there is no vested contractual right for the servant."

.....*.....*

52. Issue of prospectivity of the Rules is also discussed above. It is settled principle of law that a person attains rights in the matter of service from the date of appointment and not from the date of initiation of the

recruitment process. Therefore, this arguments of the petitioners that recruitment was initiated prior to coming into force of the amended Pension Rules has no force.”

81. In the case of *Manoj Kumar Singh and Others Vs. State of U.P. & Another* 2020 (10) ADJ 479, this Court dismissed the writ petition of the petitioners whose process of recruitment commenced in October 2002, but they were appointed after the introduction of the New Contributory Pension Scheme i.e. 01.04.2005. This Court also proceeded on the principle that the selection process contains different stages and a person does not get any indefeasible or vested right to get the appointment on being selected unless the relevant recruitment rules provide so. Paragraphs 19 and 20 of the judgement are reproduced herein below:-

“19. Above view has been consistently followed in State of Bihar Vs. Secretariat Assistant S.E. Union and others, (1994) 1 SCC 126; Union of India Vs. Kali Dass Batish, (2006) 1 SCC 779; Punjab State Electricity Board Vs. Malkiat Singh, (2005) 9 SCC 22; Rakhi Rai Vs. The High Court of Delhi, (2010) 2 SCC 637 and Vijoy Kumar Pandey Vs. Arvind Kumar Rai and others, (2013) 11 SCC 611. The law is clear that merely on being selected a candidate does not acquire an indefeasible right to be appointed unless the relevant recruitment rules so provide. State is not under any duty to fill up all or any of the vacancies. The only exception to the proposition is that State cannot act in an arbitrary manner while making appointment. The limited right in the selected candidate, therefore, is of protection against arbitrary action of the State in denying him appointment.

20. It is only where right to be considered for appointment after selection had crystallized in favour of candidate but the selected candidate was arbitrarily denied appointment during the applicability of previous pension scheme that the Court while granting relief may also extend such service benefits including pension which were available on the date when such right was denied.”

82. Now in all the cases relied by the learned Additional Advocate General, referred above, this Court has proceeded mainly on the principle that "Recruitment", "Advertisement", "Selection" and "Appointment" are different concepts under the service jurisprudence. It further proceeded that mere selection in recruitment does not give any indefeasible right or confer any vested right upon a selected candidate unless the recruitment rules prescribe so or recruitment agencies have acted arbitrarily. It further proceeded on the basis that once an

amendment has been made in Rules, 1961, and rules having been upheld by the Apex Court and being specific and clear that any person appointed after 01.04.2005 shall be governed by the New Contributory Pension Scheme, therefore, the inevitable conclusion is that a person who has joined the service on or after 01.04.2005 shall be governed by the New Pension Rules.

83. It further held that a distinction exists in law between rules of recruitment and conditions of service. Rules of recruitment regulate the recruitment from issuance of advertisement till issuance of appointment letter whereas the condition of service would come after the appointment is offered. The principle of law which have been considered and relied on by this Court in aforesaid judgements are settled principles of law, and there is no quarrel with the aforesaid proposition of law.

84. However, the question is whether the proposition of law which has been relied upon by this Court in denying the benefit of the Old Pension Scheme would apply in the facts of the present case and help the respondents in denying the benefit of old pension to the petitioners is the question which needs to be considered.

85. At this stage, it is relevant to notice that in the case of ***Mahesh Naraya (supra)***, the learned Judge in allowing the writ petition considered the judgement of Delhi High Court in the cases of ***Naveen Kumar Jha Vs. Union of India and Others 2012 SCC Online Delhi 5606 (W.P.(C) No.3827 of 2012)*** and ***Government of National Capital Territory (supra)*** against which, Special Leave Petition has been dismissed by the Apex Court and also the judgement of this Court in the case of ***Firangi Prasad (supra)***. The learned Judge after noticing the law enunciated in the aforesaid judgements opined that the judgement of ***Satyesh Kumar Mishra and Others Vs. State of U.P. and Others 2016(6) ADJ 808 (LB)*** is *per incuriam* which has been affirmed by this Court in Special Appeal Defective No.117 of 2021. The Special Leave to Appeal preferred against the judgement of the Appellate Court passed

in Special Appeal Defective No.117 of 2021 had also been dismissed by the Apex Court with an observation that the question of law involved in the Special Leave Petition is kept open. Thus, as of today, the finding of the learned Judge in the case of ***Mahesh Narayan (supra)*** holding the judgement of ***Satyesh Kumar Mishra (supra)*** *per incuriam* since it did not notice the Division Bench judgement of this Court in the case of ***Firangi Prasad (supra)*** has been affirmed by the Division Bench. Therefore, in such view of the fact, the said finding of the learned Single Judge in the case of ***Mahesh Narayan (supra)*** as affirmed by the Appellate Court is a binding precedent upon this Court.

86. It is worth noticing that the learned Single Judge in the case of ***Kamlesh Kumar Sonakar (supra)*** again observed on page 23 of the judgement that “*It appears that at the time of deciding the matter of Satyesh Kumar Mishra (Supra), judgement of Firangi Prasad (Supra) was not placed before this Court, therefore, without considering the same, decision was given in the matter of Satyesh Kumar Mishra (Supra). Under such facts and circumstances, the judgement of Satyesh Kumar Mishra (Supra) is per incuriam and cannot be treated as precedent in the present case and will not come to the rescue of respondents.*”

87. The judgement of ***Kamlesh Kumar Sonakar (supra)*** has been affirmed by the Division Bench of this Court in Special Appeal Defective No.116 of 2021. Therefore, the observation/finding of this Court that the judgement of ***Satyesh Kumar Mishra (supra)*** is *per incuriam* has been affirmed by the Division Bench in Special Appeal and has attained finality as the respondent has not placed before this Court any material indicating that the order of Special Appeal Court in the case of ***Kamlesh Kumar Sonakar (supra)*** has been assailed by filing Special Leave Petition before the Apex Court.

88. None of the judgements of this Court relied upon by the respondents, referred above, has considered the ramification of affirmation of the judgement of ***Mahesh Narayan (supra)*** and ***Kamlesh***

Kumar Sonakar (supra) by this Court in Special Appeal Defective No.117 of 2021 and Special Appeal Defective No.116 of 2021 and also the judgement of Apex Court dated 28.02.2022 dismissing the Special Leave Petition against the judgement of Special Appeal Court in **Mahesh Narayan (supra)** case.

89. Further, the aforesaid judgements relied upon by the respondents have not delved upon the issue whether the State without disclosing any justifiable reason for the inordinate delay in completing the process of selection can deny the benefit of the Old Pension Scheme to the selected candidates and such denial by the State is an arbitrary exercise of power of the State.

90. At this stage, this Court may refer to paragraph 18 of the judgement of the Delhi High Court in the case of **Inspector Rajendra Singh (supra)** wherein the Delhi High Court observed that basic terms and conditions of service, such as the right to receive pension upon superannuation, as applicable at the time of notification of the posts cannot be altered to the prejudice of the selected candidates on the post after commencement of selection process.

91. The judgement of the Delhi High Court in the case of **Inspector Rajendra Singh (supra)** was upheld by the Apex Court since the Special Leave Petition preferred against the said judgement was dismissed by the Apex Court on 08.01.2018. Thus, paragraph 18 of the judgement of the Delhi High Court in the case of **Inspector Rajendra Singh (supra)** holding that basic terms and conditions of selection to the detriment of the incumbents to the post cannot be altered after the commencement of selection process has been affirmed by the Apex Court. Consequently, the petitioner was placed in the Old Pension Scheme despite the fact that he was given the appointment after the commencement of the New Pension Scheme i.e. 01.01.2004. The fact of the present is similar to the facts of the case in **Inspector Rajendra Singh (supra)** inasmuch as in the instant case the selection to the post of Lekhpal commenced in 1999-2000 and concluded in June 2005 after the

commencement of New Pension Scheme, and in the case of ***Inspector Rajendra Singh (supra)*** the selection process started much before commencement of New Pension Scheme introduced by the Central Government and completed after 01.01.2004 i.e. commencement of New Pension Scheme.

92. In the case of ***Chintels India Limited Vs. Bhayana Builders Private Limited (2021) 4 SCC 602***, the Apex Court in paragraph 31 held that “judgments are not to be construed like Euclid’s theorems (see *Amar Nath Om Prakash v. State of Punjab (1985) 1 SCC 345*), but all observations made therein must relate to the context in which they were made....”

93. This Court now proceed to consider in the light of the proposition of law laid in paragraph 31 of the judgement in the case of ***Chintels India Limited (supra)*** whether the law propounded in the case of ***Rakhi Ray (supra)*** and ***Vijoy Kumar Pandey (supra)*** that a candidate does not get infeasible right to be appointed on mere selection would be attracted and applicable in the facts of the present case.

94. The facts in the case of ***Rakhi Ray (supra)*** was that an advertisement to fill up 20 vacancies in the cadre of District Judge in Delhi was issued. Out of which, 13 posts were to be filled up from general candidates, 3 from Scheduled Caste and 4 from Scheduled Tribes. The appellants were much below in the waiting list and all the 13 vacancies in the general category were filled up according to the merit list of general category candidates. The appellants claimed appointment on the ground that the Delhi High Court while making the advertisement did not take note of the anticipated vacancies which could be available during the next year. Accordingly, they claimed that as per the direction of the Apex Court in the case of ***Malik Mazhar Sultan (3) Vs. U.P. Public Service Commission*** those vacancies must be filled up from the select list so prepared and since the appellants were in the select list, therefore, they should be offered appointment. In such a factual backdrop, the Apex Court held that filling of vacancies over the

notified vacancies amounts to filling up of future vacancies which is not permissible in law. Consequently, the Apex Court held that the selection of a candidate does not give him an indefeasible right to be appointed.

95. Similarly, the case of **Vijoy Kumar Pandey (supra)** is a case where against the vacant post of Headmaster at Howrah Shiksha Niketan as many as 5 candidates applied for appointment to the School Service Commission, West Bengal. The Commission found two of those applying for the post to be ineligible, the remaining three were eligible for consideration. One of the candidates found ineligible questioned the rejection of his candidature in Writ Petition Po. 6117(W) of 2004 before the Calcutta High Court and obtained an interim order staying publication of the panel. The said order remained in operation till 2009 when the Writ Petition No.6117 (W) of 2004 was dismissed as withdrawn.

96. The learned Single Judge of Calcutta High Court while dismissing the writ petition vacated all the interim orders, but directed that the period during which the panel could not be operated due to the interim order passed in the writ petition be excluded for computing the life of the panel. However, the School Service Commission took no further steps in the matter nor published the panel. This led to the filing of the Writ Petition No.5866 (W) of 2009 by one Arvind Kumar Rai in which he sought a mandamus directing the School Service Commission to recommend his name for appointment against available vacancies. The writ petition of Arvind Kumar Rai was dismissed by learned Single Judge vide order dated 27.07.2009 holding that the direction sought cannot be issued as during the intervening period of 5 years several other candidates would have acquired eligibility for consideration/appointment against the post of Headmaster of the school and that in fairness to all of them, they ought to be given a chance to offer their candidature.

97. Against the said order, an appeal was filed by Arvind Kumar Rai which was allowed by the Calcutta High Court. Besides this, two more

appeals were also preferred challenging the order of the Appellate Court against the judgment dated 27.07.2009 passed in Writ Petition No.5866(W) of 2009. In such a factual backdrop, the Apex Court held that when the panel was not prepared and published, the claim of the respondent- Arvind Kumar Rai for appointment based on such a non-existent panel is untenable. The Apex Court held that the publication of the select list or panel does not by itself entitle a candidate whose name figures in such select list/panel to seek an appointment or claim mandamus which could for good and valid reasons be scrapped by the competent authority along with the entire process that culminated in the preparation of such panel.

98. The principle of law that a candidate does not get any indefeasible right for appointment only because his name appeared in the select list has been postulated in cases where the name of a candidate figured in the select list and he was not offered appointment. So the law laid down by the Apex Court in the case of ***Rakhi Ray (supra)*** and ***Vijoy Kumar Pandey (supra)*** has no application in the facts of the present case since in the present case petitioners have been offered appointment pursuant to their selection and they have joined, and their grievance is that they cannot be denied the benefit of Old Pension Scheme for the inaction of respondents in culminating the selection process with the inordinate delay of more than five years from the start of the selection process which commenced with the publication of advertisement in the year 1999-2000 inviting application for appointment on the post of Lekhpal.

99. Now in the instant case, the undisputed facts are that the advertisement for selection for the post of 'Lekhpal' was issued in the year 1999-2000. The selection process commenced in the year 2001 and the Board by letter dated 03.12.2001 scheduled the training programme. However, the training programme was postponed by the Board by letter dated 27.12.2001 on account of the stay order passed by the Apex Court in Writ Petition (C) No.488 of 2001 which was later dismissed as *infructuous*.

100. After the dismissal of the said writ petition, the State Government issued a Government Order dated 12.04.2003 directing the concerned authorities to finalise the selection proceedings which had already been initiated. In compliance thereof, the Commissioner and the Secretary of the Board of Revenue informed the District Magistrate of all districts to complete the selection proceedings/interview and declare the final result so that the successful candidates may take admission in the Lekhpal Training School by 22.05.2003 and they may be sent for training. In compliance thereof, the petitioners were admitted to Lekhpal Training School in the session 2003-04, and they completed their training in the year 2004 and written examination was conducted in the month of August 2004 and their result was declared on 17.05.2005.

101. At this stage, it would be apposite to have a glance at the scheme contemplated under the U.P. Manual to complete the Lekhpal training within the time schedule provided in the Rules of U.P. Manual.

102. Rule 213 of the U.P. Manual provides for the procedure for making the selection from eligible candidates for admission to Lekhpal school.

103. Rule 213(1)(i) of the U.P. Manual prescribes that the District Magistrate shall publish an advertisement by fixing 31st March inviting applications for admission to Lekhpal Training School. It further mandates the District Magistrate to clearly state in the advertisement the term of training and emoluments which they will receive on appointment to the post. So, reading of Rule 213(1)(i) reflects that after completion of training, the candidates shall become entitled to appointment and shall be paid emoluments as stated in the advertisement.

104. It is also relevant to note that the selection for admission to the Lekhpal Training School shall be made by the Collector on the basis of competitive examination in the subjects including viva-voce provided in Rule 213(iii). The Collector, thereafter under rule 2 of Rule, 213, shall by the middle of May report to the Commissioner of the Division in the

appended form the number of candidates selected by him. Thereafter the commissioner will communicate the list of candidates to be trained in the Lekhpal Training School of his division giving sufficient time to the District Officer concerned before appointment.

105. Rule 220 of the U.P. Manual states that the school term will commence on the 1st of July of each year and end with the examination in the month of May following.

106. Rule 221 provides that the examination shall be held in May every year on the dates which will be fixed by the Director. It further provides that a candidate would be eligible to participate in the examination after attending the minimum percentage of class as provided in the said Rule.

107. Rule 223(vi) mandates that selected examiners shall send the result sheets and answer books to the Collector concerned within a fortnight of the date of examination. The consolidated statement of the result of the examination shall be prepared by the President of the Committee and sent by the Collector to the Director not later than one week after the result sheets are received from the examiners. It further provides that the Director may call for the answer books, and either revise the marking or ask the examiner or the Committee to reconsider it. The answer books shall be kept for six months from the date of acceptance of the results by the Director.

108. A conspectus view of the rules of the U.P. Manual, extracted above, discloses that it provides a time frame for admission to U.P. Lekhpal Training School for selected candidates, and after successful completion of the Lekhpal training course and obtaining Lekhpal School Certificate, they shall be appointed on the posts advertised.

109. The scheme as provided in the U.P. Manual for conducting the examination appears to have been made with an object to fill up the vacancies of Lekhpal without delay so that the work to be discharged by the Lekhpal in the village should not suffer. To achieve the said object, specific time frame has been provided to complete different stages of

selection so as to appoint the Lekhpal without any delay.

110. As noted above, under the scheme of the U.P. Manual for admission, a time frame has been provided to complete the selection process and after that, all the candidates who have successfully completed the Lekhpal Training and have obtained Lekhpal Training Certificate shall be appointed as per Rules 5 to 7 of Rules 1958 on the post advertised.

111. The process of selection in the case in hand commenced in the year 1999-2000 and the selection process was completed in the year 2001. The Board vide letter dated 03.12.2001 scheduled the training programme. However, the petitioners could not go for training as scheduled because of the stay order passed by the Apex Court in Writ Petition (C) No.488 of 2001. Later on, the writ petition before the Apex Court was dismissed as *infructuous*. Thereafter, the State Government issued the Government Order dated 12.04.2003 for finalising the selection process. In consequence thereof, the Commissioner and the Secretary, Board of Revenue issued a Circular dated 01.05.2003 providing for the completion of the admission process of the petitioners by 22.05.2003. So, the term of petitioners may commence on the 1st of July and end with the examination in May following as per Rule 221 of the U.P. Manual.

112. There is no whisper by the respondents in the counter affidavit stating any reason for the delay in completing the session of the petitioners in August 2004 whereas it should have been completed by May 2004 as per Rule 221 of U.P. Manual.

113. Further, a reading of Rule 223(vi) of the U.P. Manual reveals that a time frame has been provided so that the result may be declared expeditiously without any delay.

114. In the instant case, though the examination of the petitioners should have been completed by May 2004 in view of Rule 221 of the U.P. Manual, but it was done in the month of August, 2004, and the result was declared in the month of April 2005 which was against the

mandate of rules of U.P. Manual specifying time schedule for training of selected candidates in Lekhpal Training School.

115. The inordinate delay in concluding the selection process cannot be attributed to the petitioners. Because of inordinate delay in completing the selection process, petitioners cannot be put to disadvantage or cannot be made liable to suffer and denied the benefit of the old pension to which they were entitled under Rule 30 of Rules, 1958 if the session of Lekhpal training school would have been completed as per Rules 220 & 221 of U.P. Manual and result of the petitioners had been declared as per Rule 223(vi) of U.P. Manual.

116. Under Rules, 1958, once a candidate completes the Lekhpal training and obtains a Lekhpal training certificate, he shall be appointed as per Rule 7(1) of Rules, 1958 on the posts advertised.

117. In the instant case, it is evident from the advertisement that the selection for admission to Lekhpal Training School had been made against the posts notified in the advertisement. Thus, petitioners after completing the Lekhpal training and obtaining the Lekhpal training certificate are entitled to be appointed to the post under Rule 7 of Rules, 1958. Thereby, their right to get appointed accrued to them on completion of training and obtaining Lekhpal training certificate from the Lekhpal Training School on the vacancies notified in the advertisement which is also fortified from the reading of Rule 213(1)(i) of U.P. Manual which unequivocally prescribes that the advertisement inviting application for admission in Lekhpal Training School shall also state the term of the training and emoluments payable to them on appointment.

118. So, in the present case, the appointment of a candidate only depended upon the successful completion of training in Lekhpal Training School and nothing else. In such view of the fact, the proposition of law that a candidate does not get any indefeasible right merely because his name appeared in the select list is not attracted.

119. There is no quarrel that after an amendment in Rules, 1961, a person appointed after 01.04.2005 shall be governed by the New Contributory Pension Scheme. However, in the instant case, the petitioners are not aggrieved by the amendment in Rules, 1961 rather they are aggrieved by the inaction on the part of the State Government in causing the inordinate delay of about six years in completing the selection process and the respondents have not cared to disclose any reason for causing such an inordinate delay in concluding the selection.

120. It is also pertinent to note that the specific case of the petitioners in the writ petition was that the inordinate delay of about six years in completing the selection process was attributable to the State Government and petitioners cannot be made liable to suffer for this, but respondent/state did not disclose the reasons for the delay in concluding the selection. The respondents did not think it appropriate to utter in the counter affidavit the reasons for the inordinate delay of about six years in concluding the selection process. If the State had stated justifiable reason in the counter affidavit for the inordinate delay in concluding the selection process, the State was right in denying the benefit of the Old Pension Scheme to the petitioners.

121. At this stage, it may also be worth noticing that the State may be justified in deferring the selection because of the stay order passed by the Apex Court in Writ Petition No.488 of 2001, but that writ petition was dismissed in the year 2003, and thereafter, a time bound schedule was given by the Commissioner and Secretary, Board of Revenue to conclude the selection. The State has not given any reason for the delay in concluding the Lekhpal Training Course within the time frame prescribed under Rule 220 and Rule 221 of the U.P. Manual and not declaring the result of the examination held in August 2004 expeditiously as contemplated under Rule 223(vi) of the U.P. Manual. The result was declared by the respondents after more than eight months from the date of examination without stating the reason for the delay of eight months in declaring the result.

122. In such view of the fact, this Court finds that the action of the State Government has resulted in denial of the valuable right of pension which was available to them till the commencement of the New Contributory Pension Scheme w.e.f. 01.04.2005.

123. It is also pertinent to note that the case of the petitioners is also covered by the judgement of this Court in the case of ***Mahesh Narayan (supra)*** and also in the case of ***Firangi Prasad (supra)*** of this Court and various other judgements which have been relied upon by the learned counsel for the petitioners and referred to in the earlier part of the judgement.

124. Thus, judgements relied upon by the respondents are of no help to them as the ratio laid down in those judgements is not applicable more so when the judgement of ***Mahesh Narayan (supra) & Kamlesh Kumar Sonakar (supra)*** wherein this Court held the judgement of ***Satyesh Kumar Mishra (supra)*** *per incuriam* has been upheld by the Appellate Court in Special Appeal and the Apex Court dismissed the Special Leave Petition filed against the judgement of Special Appellate Court in the case of ***Mahesh Narayan (supra)***.

125. At this stage, it is relevant to point out that the State Government has adopted a New Contributory Pension Scheme following the new pension scheme implemented by the Union of India which is also evident from the notification dated 28.03.2005. However, the Union of India accepting the various judgements of the Delhi High Court affirmed by the Apex Court later issued a notification dated 17.02.2020 whereby it has given the option to its employees whose selection for the appointment was finalised before 01.01.2004, but who joined the government service on or after 01.01.2004 to opt either for Old Pension Scheme or New Pension Scheme. The reason for extending the said benefit by the Government of India is evident from the notification that the delay in appointment was on account of administrative reasons and was not attributable to the Government servant. Paragraph 3 of the notification dated 17.02.2020 is reproduced herein below:-

“3. From the representations of the Government employees and the references received from Ministries/Departments, it has been observed that in many of the cases referred to this Department, selection process (including written examination, interview and declaration of result) for recruitment had been completed before 01.01.2004 but the employee joined the Government service on or after 01.01.2004. A few illustrations where the selection was finalized before 01.01.2004 but actual joining took place on or after 01.01.2004 are as under:-

(i). The result for recruitment was declared before 01.01.2004 but the offer of appointment and actual joining of the Government servant was delayed on account of police verification, medical examination etc.

(ii). Some of the candidates selected through a common selection process were issued offers of appointment and were also appointed before 01.01.2004 whereas the offers of appointment to other selected candidates were issued on or after 01.01.2004 due to administrative reasons/constraints including pending Court/CAT cases.

(iii). Candidates selected before 01.01.2004 through a common competitive examination were allocated to different Departments/organization. While recruitment process was completed by some Department(s)/organizations appointment to the candidates allocated to the other Departments/organization were issued on or after 01.01.2004.

(iv). Offers of appointment to selected candidates were made before 01.01.2004 with a direction to join on or after 01.01.2004.

(v). Offers of appointment were issued to selected candidates before 01.01.2004, and many/most candidates joined service before 01.01.2004. However, some candidates(s) were allowed extension of joining time and they joined service on or after 01.01.2004. However, their seniority was either unaffected or was depressed in the same batch or to a subsequent batch, the result for which subsequent batch was declared before 01.01.2004.

(vi). The result for recruitment was declared before 01.01.2004 but on or more candidates were declared disqualified on the grounds of medical fitness or verification of character and antecedents, caste or income certificates. Subsequently, on review, they were found fit for appointment and were issued offers of appointment on or after 01.01.2004.

In all the above illustrative cases, since the result for recruitment was declared before 01.01.2004, denial of the benefit of pension under CCS (Pension) Rules, 1972 to the affected Government servants is not considered justified.”

126. Similarly, a notification dated 03.03.2023 has been issued by the Union Government whereby it has extended the benefit of the Old Pension Scheme to those Central Government employees who were recruited against the posts/vacancies advertised/notified for recruitment on or before 22.12.2003.

127. Paragraphs 3 & 4 of the notification disclose the reason for covering those employees under the Old Pension Scheme who have

been appointed against the posts/vacancies advertised/notified for recruitment on or before 22.12.2003 which are reproduced herein below:-

“3. Representations have been received in this Department from the Government servants appointed on or after 01.01.2004 requesting for extending the benefit of the pension scheme under Central Civil Services (Pension) Rules, 1972 (now 2021) on the ground that their appointment was made against the posts/vacancies advertised/notified for requirement prior to notification for National Pension Scheme, referring to court judgements of various Hon'ble High Courts and Hon'ble Central Administrative Tribunals allowing such benefits to applicants.

4. The matter has been examined in consultation with the Department of Financial Services, Department of Personnel & Training, Department of Expenditure and Department of Legal Affairs in the light of the various representations/references and decisions of the Courts in this regard. It has now been decided that, in all cases, where the Central Government civil employee has been appointed against a post or vacancy which was advertised/notified for recruitment/appointment prior to the date of notification for National Pension Scheme i.e. 22.12.2003 and is covered under the National Pension Scheme on joining service on or before 01.01.2004, may be given one-time option to be covered under the CCS (Pension) Rules, 1972 (now 2021). This option may be exercised by the concerned Government servants latest by 31.08.2023.”

128. In the light of notifications dated 28.03.2005 and 03.03.2023, referred to above, respondents have been granted time by this Court to state their stand. The order of this Court dated 05.04.2023 in connected Writ-A No.42840 of 2015 reads as under:-

“Heard learned counsel for petitioners and learned counsel for respondents.

Annexure-1 to the rejoinder affidavit contains the notification of the Central Government dated 03.03.2023, relevant portion of which reads as follows:

"The matter has been examined in consultation with the department of Financial Services, Department of Personnel & Training, Department of Expenditure and Department of Legal Affairs in the light of the various representations/references and decisions of the Court in this regard. It has now been decided that, in all cases where the Central Government civil employee has been appointed against a post or vacancy which was advertise/notified for recruitment/appointment, prior to the date of notification for National Pension System i.e. 22.12.2003 and is covered under the National Pension System on joining service on or after 01.01.2004, may be given a one time option to be covered under the CCS (Pension) Rules, 1972 (now 2021). This option may be exercised by the concern Government servants latest by 31.08.2023"

Thus, the Central Government has already come out with the policy giving an option to its employees for old pension scheme in cases where the advertisement for the post was made prior to date of notification for National Pension Scheme i.e. 22.12.2003 irrespective of the fact that appointments were made on or after 01.01.2004 i.e. National Pension Scheme was brought into force. It is stated that it is normal for the State Government to follow the policy of the Central Government, therefore, the learned Standing Counsel is granted ten days time to complete instructions from respondent no.1-Principal Secretary Department of Revenue as to whether the State intends to follow the said

notification.

Rejoinder affidavit is taken on record.

Put up this case on 18.04.2023 in the additional cause list amongst top ten cases.

129. This Court on 18.04.2023 had again granted a week time on the request of the learned Additional Advocate General to seek instruction in the light of the order dated 05.04.2023 passed by this Court. The order dated 18.04.2023 reads as under:-

“Sri Neeraj Tripathi, Additional Advocate General prays some further time to seek instructions in respect to the order passed by this Court on 05.04.2023.

Accordingly, a week's time is granted to Sri Neeraj Tripathi, Additional Advocate General to come out with a positive statement as to whether the State Government is inclined to follow the policy notified by the Central Government vide notification dated 03.03.2023.

List this case on 26.04.2023.”

130. However, the State Government despite the order passed by this Court asking time to take a decision for grant of benefit of Old Pension Scheme in view of the notification dated 03.03.2023 did not take any decision. The New Contributory Pension Scheme introduced by the State Government is in consonance with the New Contributory Pension Scheme adopted by the Central Government. The Central Government on the representation of its employees found that delay in completing the selection process in respect of posts/vacancies advertised/notified for recruitment on or before 22.12.2003 was not attributable to the employees and was beyond the control of employees and accepted the judgements of various Courts extending the benefit of Old Pension Scheme to the employees, who have been recruited against the posts/vacancies advertised/notified on or before 22.12.2003. Therefore, this Court does not find any valid reason to deny the benefit of the Old Pension Scheme to the petitioners as the selection process in the instant case commenced in the year 1999-2000 and took about six years to culminate, and the inordinate delay of about six years in concluding the selection process was attributable to the State Government.

131. It is also worth noticing that the two notifications dated 17.02.2020 and 03.03.2023 issued by the Central Government granting the benefit of the Old Pension Scheme to its employees falling within

the ambit of the aforesaid two notifications by accepting the judgements of various Courts affirmed by the Apex Court were not in existence when the cases relied upon by the learned counsel for the respondent/State were decided. For this reason, also, the judgements on which reliance has been placed by the learned Additional Advocate General are distinguishable and do not come in aid to the respondents in denying the claim of Old Pension Scheme to the petitioners.

132. Now, so far as the contention of the learned Additional Advocate General that the letter of appointment of the petitioners stipulates that they shall be governed by the new pension scheme is concerned, the perusal of appointment letters of petitioners discloses that there is no such stipulation in the appointment letters of the petitioners.

133. So far as the submission of the learned Additional Advocate General that petitioners have been appointed in the year 2005 and have raised the grievance for not extending them the benefit of Old Pension Scheme after inordinate delay is concerned, the similar objection was raised by the Central Government in the case of ***Inspector Rajendra (supra)*** before the Delhi High Court and the Delhi High Court in paragraph 39 of the judgement repelled the said contention holding that if delay has resulted in unsettling things already settled, the relief may be declined on the ground of delay, but in the instant case, the grant of relief would not result in unsettling things already settled and the judgement of Delhi High Court in the case of ***Inspector Rajendra (supra)*** has been affirmed by the Apex Court as Special Leave to Appeal preferred against the said judgement has been dismissed.

134. Even otherwise, the benefit of pension will accrue to the employees after they retire, therefore, the writ petitions are not liable to be dismissed on the ground of delay in raising the grievance by the petitioners with regard to their claim for Old Pension Scheme. The law is also settled that the pension is a recurring cause of action, and for this reason, also, the writ petitions cannot be dismissed on the ground of delay and laches.

135. Now so far as the contention of the learned Additional Advocate General that the claim of petitioners was rejected in the year 2016 which is evident from page 157 of the paper book of the writ petition and petitioners have not challenged the rejection of their claim, this Court may note that said rejection of claim of petitioners have been noted in the file of the department and no order rejecting the claim of petitioners has been supplied to the petitioners. Further, the petitioners continued to raise their grievance against the rejection of their claim and their claim as stated by the respondents in the counter affidavit had been rejected by the Finance Department on 26.11.2019. However, the counter affidavit does not indicate that any order rejecting the claim of the petitioners has been communicated to the petitioners.

136. The remedy under Article 226 of the Constitution of India is discretionary and if petitioners have made out a case that the action of the State Government is arbitrary and is hit by Article 14 of the Constitution of India, rejection of their claim on a technical ground will defeat the purpose of justice since the paramount consideration of the Court in deciding a dispute is to do substantial justice and not to defeat the justice on technical grounds. In such view of the fact, this Court in a given case under Article 226 of the Constitution of India which is a discretionary power conferred to constitutional courts under the Constitution of India can mould the relief and grant the same to subserve the interest of justice. Accordingly, the aforesaid contention of the learned Additional Advocate General does not stand to merit in the present case and deserves to be rejected.

137. Thus, for the reasons given above, the action of the respondents in denying the benefit of the Old Pension Scheme to the petitioners is declared illegal. Accordingly, all the writ petitions are ***allowed*** and respondents are directed to place the petitioners and other similarly situated employees under the Old Pension Scheme. There shall be no order as to costs.

Order Date:-26.10.2023

Sattyarth