



2025:AHC:160546

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT –A No. - 6954 of 2019

Sandeep Raizada and others Petitioners(s)

Versus

State of U.P. and others Respondents(s)

Counsel for Petitioners(s) : A.K. Srivastava, Samir Sharma
(Senior Adv.), Sudhir Dixit, Utkarsh
Dixit

Counsel for Respondent(s) : C.S.C., Sunil Kumar Mishra, Vinod
Kumar Pandey

AFR

Reserved on 03.09.2025

Delivered on 11.09.2025

Court No. - 5

HON'BLE SAURABH SHYAM SHAMSHERY, J.

Brief History of Roadways and it's Employees in State of U.P.

1. In order to consider real controversy involved in present case, it would be necessary to mention few facts about history of roadways in State of Uttar Pradesh and for that the Court takes some details mentioned by Supreme Court in a judgment passed in the case of **U.P. Roadways Retired Officials and Officers Association Versus State of U.P. And Another : (2024) 9 SCC 33** and other relevant facts from pleadings.

2. In 1947, Uttar Pradesh Roadways was created as a temporary department of State Government for providing public transport facilities and its employees were accordingly appointed temporarily.

3. By a Government Order dated 16.09.1960 directions were issued on "Terms and Conditions of Service of Temporary Employees in the U.P. Roadways - Revisions of". For reference said Government Order is reproduced hereinafter :-

"G.O. No. 3014 D/XXX- 135/59 dated Sept. 16, 1960 Subject: Terms and conditions of service of temporary employees in the U.P. Roadways - Revisions of.

I am directed to say that the question of revising the terms and conditions of service of the Roadways employee, which is a nationalized commercial undertaking and has to work in conditions different from those prevailing in regular government offices, has been under the consideration of Government for some time past.

The passenger and goods services have to run irrespective of the fact whether it is a Sunday or a festival. The schedule of passenger services run by the State Undertaking cannot be altered off an on. In order to keep the Roadways services going the maintenance and repairs of vehicles has to be attend to even at odd hours at the workshops. At present the conditions of service of the employees of the U.P. Government Roadways and the Central Workshop, Kanpur are governed by the various rules and standing orders of Government applicable to other temporary government servants under the rule making powers of the Governor. In view of the special service conditions of employees of the Roadways it seems necessary to evolve a new set of service conditions for its employees which may be compatible with the nature of work and functions of the organization. Accordingly, in super session of all previous orders on the subject, the Governor has been pleased to pass the following orders prescribed revised terms and conditions of service of temporary employees of the U.P. Roadways including those detailed in para 2 below. The revised terms and conditions of service shall be applicable to all future entrants in the Roadways organization and shall be enforced in the manner mentioned hereinafter in the case of temporary employee including those on the work charge strength and paid on monthly basis.

(1) All temporary employees except those referred to in para 2 shall get one day's rest in every period of seven days in accordance with the rules to be framed by Government. In case the employees is deprived of any of the days or rest, he shall be allowed within the same or following month compensation holidays of equal number of the days of rest so lost.

(2) They shall be entitled to get one days paid holidays for every 20 days of work performed by them during the previous calender year, subject to the condition that the employee has worked for a period of

240 days or more during the previous calendar year. In case the employee is not able to avail of full or part of the leave admissible to him during the calendar year, it will be carried over to the following year, subject to a maximum of 30 days. (3) They shall get five days festival holidays in a calendar year as prescribed by Government and subject to the rules to be framed for the purpose.

(4) They shall be paid extra wages at the rate of twice of ordinary rate of wages in respect of work performed by them beyond the prescribed hours of work.

(5) Their services are liable to termination on one month's notice on either side, or one month's pay in lieu thereof.

(6) In other respect the conditions of service will remain the same as at present.

The revised terms and conditions of services mentioned in para 1 above shall not apply to the following category of employees:-

(a) All employees working in the offices establishment of the Asstt. General Manager, General Manager, Service Manager, Chief Mechanical Engineer, Roadways Central Workshop, Kanpur and the Head Quarter Office of the Transport Commissioner.

(b) Supervisory staff of the rank of Junior Station Incharge and above on the traffic side;

(c) Technical staff of the rank of Junior Foreman and above on the engineer side;

The above three categories of Roadways staff will continue to be treated as regular government servants and will be entitled to the benefits admissible to any other government servant of the same category.

3. The Roadways and Central Workshop employees to whom the revised service rules are being made applicable shall be entitled to the provident fund benefits according to the provisions of the Employees Provident Fund Act. For this necessary orders have already been issued separately in G.O. No. 1488-D/XXX 2198/59 dated July, 29, 1960. Immediate step may please be taken for the implementation of the orders issued in the above G.O. The employees governed by the new terms and conditions of service will continue to get facilities for medical treatment so far enjoyed by them. All future entrants shall also be entitled to facilities for medical treatment admissible to Government servants. The canteen and rest house facilities as may be prescribed by government shall also be made available to them in course of time.

4. These order shall come into force w.e.f. October 1, 1960 and shall apply to all future entrants in the service of the Roadways organization

and also the existing temporary employees who accept to continue to work on the revised terms and conditions of service. The status of Roadways employees already made permanent remains unaffected. All the existing temporary employees except those mentioned in para 2 above may be asked to indicate in writing if the new service conditions mentioned above are acceptable to them. Those who accept the new terms and conditions of service will be required to fill in a separate acceptance for which will be kept with their service records. If, however, any of the employees do not accept the new terms their services are to be terminated in accordance with the terms of their employment. I am to suggest that the implications of the revised orders may be explained to all concerned by the General Managers and Asstt. General Managers and Chief Mechanical Engineer and that necessary action may please be intimated forthwith in order to implement the above orders."

4. Subsequently a Government Order dated 28.10.1960 was issued, whereby pension was provided to employees of three categories of Roadways Organization. For reference the same is mentioned hereinafter:-

"GO No. 3567-P/XXX-2198/99 dated 28.10.1960 - In continuation of G.O. No. 30140/XXX-135-V/1959 dated 16.9.1960, I am directed to say that the question or declaration the permanent posts in the Roadways Organization (including the Roadways Central Workshop Kanpur) as pensionable has been under consideration of Government for some time past. In this connection, the Governor has been pleased to order that the permanent gazetted and non-gazetted incumbents of the following three categories would be entitled to the contributory 10 Provident Fund cum Pension Rules:-

(a) The employees working in the office establishment of the Asstt. General Manager, General Managers, Service Managers, Chief Mechanical Engineer, Roadways Central workshop, Kanpur and the Headquarter office of the Transport Commissioner.

(b) Supervisory staff of the rank of Junior Station Incharge and above on the traffic side.

(c) Technical staff of the rank of Junior Foreman and above on the Engineering side.

2. The Governor has been further pleased to order, under note 3 Below Article 350 of the Civil Service Regulations that the rest of the permanent non-gazetted Employees both in the traffic and engineering sections of the organization, would be treated as non-pensionable posts referred to above, will be eligible for Provident Fund benefits in accordance with the provisions of the Employees Provident Fund Act.

3. I am also to add that Temporary Employment of the categories mentioned in para 1 above will be entitled to Provident fund benefits as provided under the Employees Provident Funds Act. As and when they became permanent, they will have the option to elect the contributory Provident Fund cum Pension Benefits in lieu of Employees Provident Fund.

4. As regards the grant of Provident Fund Benefits to other temporary and work charges employees of the Roadways organization necessary orders have already been conveyed to you in G.O. No. 14880/XXX-219/59 dated 29.7.1960.

Sd/-

Jt. Secy.

Copy forwarded under U.P. Parivahan Ayukta (Lekha) U.P. Lucknow endorsement NO. C-935FA/594FA/57 dated 1.11.1960 to all the General Managers, Asstt. General Managers, Service Managers, Accounts Officers and all other concerned for information and necessary action."

5. The Roadways Corporation was constituted under Section 3 of the Road Transport Corporation Act, 1950 (*hereinafter referred to as "Act, 1950"*) w.e.f. 01.06.1972. Section 3 of the Act, 1950 is mentioned herein after:-

"3. Establishment of Road Transport Corporations in the States. -The State Government having regard to--

(a) the advantages offered to the public, trade and industry by the development of road transport;

(b) the desirability of co-ordinating any form of road transport with any other form of transport;

(c) the desirability of extending and improving the facilities for road transport in any area and of providing an efficient and economical system of road transport service therein,

may, by notification in the Official Gazette, establish a Road Transport Corporation for the whole or any part of the Union territory of Delhi under such name as may be specified in the notification."

6. State Government has issued Government Order dated 29.05.1972 wherein name of existing posts and name of corresponding posts in Corporation were mentioned. Earlier post by the name of Assistant Chief Manager was referred as Assistant Regional Manager in Corporation. In November, 1978 Corporation appointed some persons on newly created

posts of Assistant Regional Manager and it is claimed that said posts were pensionable.

7. The State of U.P. issued a Government Order dated 07.06.1972, where by all the employees of erstwhile Roadways holding permanent posts as per earlier referred Government Order dated 28.10.1960 were declared entitled for pension, except following five categories of employees:

- “(i) Those working on daily wages;*
- (ii) Those appointed on ad-hoc basis;*
- (iii) Those who had not completed minimum service period prescribed for the post;*
- (iv) Those holding posts which were not declared pensionable;*
- (v) Those who had been removed from service after departmental inquiry and those had been found guilty of criminal charges.”*

8. The State of U.P. issued a Government Order dated 05.07.1972 on a subject “Constitution of Uttar Pradesh State Road Transport Corporation and merger of the Officers/Employees of the Transport Organization”. For reference the same is extracted hereinafter :-

“No. 3414/TEES-2-170 N/72

*Sender
Shri Girija Prasad Pandey
Commissioner & Secretary
Government of Uttar Pradesh*

*To
Chief Manager
Uttar Pradesh State Road Transport Corporation Lucknow
Dated: Lucknow July 5, 1972
Transport Section-2*

Sub: Constitution of Uttar Pradesh State Road Transport Corporation and merger of the officers/employees of the Transport Organisation.

*Sir,
After merger of the officers/employees working under Uttar Pradesh Roadways with State Road Transport Corporation, in connection with merger of services under the Corporation, I have been directed to issue*

the following, amending the Government order no. 3000/30-2-1 70/72 dated June 7, 1972:

(1) According to the provision of para (1) (A) of the above Government order, all those permanent or temporary officers/employees who before the constitution of State Road Transport Corporation were in the services of State Roadways, their services would be considered in the Corporation on deputation. For this deputation no period is being fixed now.

(2) The State Road Transport Corporation has under section 45 of the Transport Corporation Act have not made rules about the service conditions till now in connection with the officers and employees under it. Therefore, leaving the above discussed Annexure 1 (1) A of the above Government order dated June 7, 1972, the remaining annexures would be considered dismissed. But whenever the Corporation would make rules regarding service conditions, then in them this assurance of the Government would be included that the service condition of the officers/employees under the Corporation in any condition would not be contemptuous than those conditions which were available to them under the Uttar Pradesh State Roadways and their government service period, their seniority under the corporation, promotion, fixation of pay, right concerning leave and financial benefits would be considered in that way only as they would have remained in their being in government service.

*Yours faithfully
(Girija Prasad Pandey)
Commissioner & Secretary*

No. 2114 (1)/Tees-2-170N/72

Copy submitted to Accountant General, Government of Uttar Pradesh, Allahabad, for information and necessary action.

*By order,
(Bhagwan Swaroop Saxena)
Dy. Secretary*

No. 3414(2)/Tees-2-170N/72

Copy submitted to the following for information: -

- (1) Transport Commissioner, Uttar Pradesh, Lucknow.*
- (2) Finance (Expenditure-7) Section*

*By order,
(Bhagwan Swaroop Saxena)
Dy. Secretary”*

9. The State of U.P. issued a Government Order dated 21.07.1972 under Section 34(1) of Act, 1950 on a subject in regard to selection procedure of posts under Road Transport Corporation. Section 34 of Act,

1950 and contents of Government Order dated 21.07.1972, being much relevant for the purpose of adjudication of the present case, are extracted hereinafter:-

“34. Directions by the State Government.-(1) The State Government may, after consultation with a Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation, and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks.

(2) In the exercise of its powers and performance of its duties under this Act, the Corporation shall not depart from any general instructions issued under sub-section (1) except with the previous permission of the State Government.”

Government Order dated 21.07.1972

"सं० 3123/30/1/19 एन/72

श्री भगवान् स्वरूप सक्सेना,
उप सचिव,
उत्तर प्रदेश शासन ।

सेवा में,
प्रधान प्रबन्धक,
उत्तर प्रदेश राज्य सड़क परिवहन निगम,
लखनऊ।

दिनांक: लखनऊ: जुलाई 21, 1972

परिवहन अनुभाग-1

विषय:- राज्य सड़क परिवहन निगम में पदों के चयन सम्बन्धी प्रक्रिया।

महोदय,

आपके पत्र संख्या 40/सचिव/72, दिनांक 28 जून, 1972 के संदर्भ में मुझे यह कहने का निदेश हुआ है कि रोड ट्रान्सपोर्ट कारपोरेशन एक्ट 1950 की धारा 34 (1) द्वारा प्रदत्त शक्तियों का प्रयोग करने, राज्याल, उत्तर प्रदेश सड़क परिवहन निगम से पुरामर्श करने के उपरान्त एतद्वारा यह निर्देश देते हैं कि 01 जून, 1972 के पश्चात निगम द्वारा अपने सेवा नियम तैयार करने तक, रडिवेज के उन पदों के लिए, जो निगम के गठन के पूर्व लोक सेवा आयोग की परिधि में थे, नियुक्ति आदि के लिए अर्हताएँ तथा अन्य सेवा शर्तें वही बनी रहेंगी जैसी कि निगम की स्थापना के पूर्व उत्तर प्रदेश राजकीय रोडवेज में थी। नये या रिक्त पदों पर चयन के लिए पदों की भर्ती विज्ञप्ति पर निगम द्वारा स्थापित चयन समिति, अभ्यर्थियों का चयन कर निगम को नियुक्ति के लिए संस्तुति करेगी।

भवदीय,
ह०/ भगवान स्वरूप सक्सेना,
उप सचिव ।

संख्या- 3123 (1)/30- तदिदनांकित

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

1. महालेखाकार, उत्तर प्रदेश, इलाहाबाद।
2. परिवहन आयुक्त, उत्तर प्रदेश, लखनऊ।

ह०/-
भगवान स्वरूप सक्सेना,
उप सचिव ।"

10. In exercise of power under Section 45(2)(c) of Act, 1950 the State of U.P. framed U.P. Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 (*hereinafter referred to as "Regulations, 1981"*), whereby service provisions were framed for the employees of the Corporation. Section 45 of Act, 1950 and Regulations 4 and 39 of Regulations, 1981, being relevant, are reproduced hereinafter:

"45. Power to make regulations.-(1) A Corporation may with the previous sanction of the State Government, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:--

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

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

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

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

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

(f) the period after the expiration of which unclaimed articles or goods may be sold by public auction;

(g) the regulation of the carriage of passengers and goods in the road transport services of the Corporation."

"4. Option by the employees of the erstwhile Government Roadways Department and other employees. - *(1) An employee of the erstwhile U.P. Government Roadways Department who was placed on deputation with the Corporation and who has or is deemed to have offered for absorption in the Service of the Corporation in accordance with Rule 4 of the Uttar Pradesh State Roadways Organisation (Abolition of Posts and Absorptions of Employee) Rules, 1982 (hereinafter referred to as the said, Rules), shall with effect from August 28, 1982, sand so absorbed, and shall, accordingly cense to be an employee of the State Government with effect from the said date.*

Provided that the terms and conditions of service of the employees so absorbed in the Service of the Corporation shall, subject to the provisions of G.O. No. 3414/XXX-2-170- N-72, dated July 5, 1972, and the said rules be governed by these regulations.

(2) (i) Existing employees, who are not covered by sub- regulation (1) or those who are not exempted under Regulation 2, shall within one month of the commencement of these regulations, inform the appointing authority or such authority as the General Manager may in this behalf appoint whether or not they want to be governed by these regulations.

(ii) If they opt or fail to exercise their option for being governed by these regulations, their terms and conditions of appointment, so far as they are inconsistent with these regulations, shall stand rescinded:

Provided that, in respect of workmen where any of the provisions of these regulations is less favourable than the provisions of the U.P. Industrial Disputes Act, 1947, the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Factories Act, 1948 or of any other Act applicable to them, the provisions of such Act shall apply.

(iii) If such persons do not opt for being governed by these regulations, their services may be terminated in accordance with the terms of their appointment."

"39. Pension and other retirement benefits-*(1)(i) Subject to the provisions of clause (ii) of this sub- regulation, an employee of the Corporation shall not be entitled to pension, but he shall be entitled to the retirement benefits mentioned in sub-regulation (2).*

(ii) A person, who was the employee of the State Government in the erstwhile U.P. Government Roadways and has opted for the service of the Corporation, shall be entitled to pension and other retirement

benefits in terms of the G.O. No.3414/302-170-N-72, dated July 5, 1972.

(iii) Such employees who have come in the service of the Corporation on pensionable posts on 1st June, 1972 or after that and now those posts have been declared non-pensionable under this Rule; the Corporation would contribute in the Provident Fund of such employees as desired under the provisions of Employees Provident Fund Scheme, 1952.

(2) Without prejudice to the provisions of sub- regulation (1) an employee (including an employee who was in the service of the State Government in the erstwhile U.P. Government Roadways Department), shall be entitled to the following retirement benefits:

(i) Employees Provident Fund or the General Provident Fund, as the case may be;

(ii) Gratuity in accordance with the Payment of Gratuity Act, 1972 or the relevant Government Rules, as may be applicable;

(iii) Amount due under Group Insurance Scheme, 1976;

(iv) One free family pass in a year for journey within the State;

(v) A free family pass for his return to his home from the place of posting at the time of retirement in case he does not accept railway fare;

(vi) Any other benefit that may be allowed by the Corporation from time to time. "

11. Rules 1, 4 and 8 of "The Uttar Pradesh State Roadways Organization (Abolition of Posts and Absorption of Employees) Rules, 1982" (hereinafter referred to as "Rules, 1982"), being relevant, are reproduced hereinafter:

"1. Short title and commencement.- (1) These rules may be called the Uttar Pradesh State Roadways Organisation (Abolition of Posts and Absorption of Employees) Rules, 1982.

(2) They shall come into force at once."

"4. Option to employees and absorption in Corporation service.-(1) An employee of the U. P. State Roadways Organisation, who was placed on deputation with the Corporation and who does not wish to be absorbed in the service of the Corporation, shall, within 3 months from the notification of these Rules in the Gazette, intimate the Secretary to Government in the Transport Department that he does not wish to be so absorbed.

(2) Every other employee who does not give an intimation, in accordance with sub-rule (1), shall be deemed to have exercised his option for absorption in the service of the Corporation.

(3) An employee, who is deemed to have opted for absorption in the service of the Corporation, in accordance with sub-rule (2), shall stand so absorbed with effect from the date of expiry of three months from the date of notification of these rules and his service under the State Government shall, with effect from the same date cease.”

“8. Consequences where employee is absorbed in the service of the Corporation.--*(i) Leave account of the employee shall be transferred to the Corporation and the Corporation shall not be entitled to receive any contribution or compensation on this account from the Government.*

(ii) Government shall bear the liability for pension, (which does not include family pension), and for gratuity, (if admissible to an employee), in proportion to the qualifying service in the Government rendered by an employee before the date of his being placed on deputation with the Corporation, the entire liability for family pension shall be borne by the Corporation.

(iii) Employees provident fund scheme.--In respect of an employee who did not hold any pensionable post but was a member of an Employee's Provident Fund Scheme, the liability for contribution required to be made by an employer, for the period prior to 1-6-1972 shall be that of the Government and with effect from 1-6-1972, it shall be that of the Corporation.

(iv) An employee shall, from the date of his absorption, cease to subscribe to his General Provident Fund account, if any, under the State Government and the amount to his credit in the fund, together with interest thereon, according to rules till the month preceding the date of transfer of his account shall be transferred to his new account to be opened under the Corporation.”

12. In the year 1986, Corporation on basis of parameters determined by a report submitted by Pallavan Transport Consultancy Services for determination of number of Officers required in comparison to numbers of bus services, a considered proposal was prepared by Corporation for creation of 135 temporary posts of Assistant Regional Manager, which was adopted in the 98th meeting of the Board of Directors of Corporation and accordingly Corporation by an order dated 17.10.1986 created referred posts on temporary basis. The ‘Proposal’, it’s ‘Adoption’ and ‘Order’ are reproduced hereinafter :-

Proposal

"निगम के पुर्नगठन के सन्दर्भ में विभिन्न विधाओं के सहायक क्षेत्रीय प्रबन्धक स्तर के 135 पदों के सृजन का प्रस्ताव ।

उत्तर प्रदेश राज्य सड़क परिवहन निगम के कार्य कलापों की विकेन्द्रीय कृत किये जाने के उद्देश्य से निगम की विभिन्न क्षेत्रीय इकाइयों / जोनल इकाइयों को त्रि स्तरीय सूचि से दो स्तरीय सूचि में परिवर्तित किये जाने का प्रस्ताव निदेशक मंडल की 96 वीं बैठक में प्रस्तुत किया गया था। निदेशक मंडल ने संकल्प संख्या 1480/86 द्वारा उक्त का परिक्षण कर संस्तुति करने हेतु एक उप समिति का गठन किया था। उप समिति द्वारा अपनी बैठक दिनांक 2-6-06 में प्रोजेक्ट रिपोर्ट का विस्तारपूर्वक अध्ययन करने के उपरांत संशोधनों सहित योजन का क्रियान्वन करने हेतु अतिरिक्त पदों के सृजन किये जाने का प्रस्ताव शासन को अग्रतारित करने की अनुमति प्रदान की गयी थी। उप समिति के उक्त निर्णय का अनुमोदन निदेशक मण्डल ने अपनी बैठक दिनांक 20-6-86 में संकल्प संख्या 1498/86 द्वारा किया था। निदेशक मण्डल के अनुमोदनोपरांत 6 प्रधान प्रबन्धक, 18 उप प्रधान प्रबन्धक, 42 क्षेत्रीय प्रबन्धक एवं 135 सहायक क्षेत्रीय प्रबन्धक स्तर के अधिकारियों के पदों के सृजन का प्रस्ताव शासन को अग्रसारित किया गया था। शासन स्तर पर विस्तारपूर्वक विचार विमर्श के मध्य यह इंगित किया गया की शार्वजनिक उद्यम विभाग के द्वारा जारी शासनादेश संख्या 306/44-2- उप वे०रि०/1983 दिनांक 3-10-83 के क्रम में जारी शासनादेश संख्या 456 / चौवालीस/2-85 दिनांक 15-4-85 के अंतर्गत निदेशक मण्डल ऐसे समस्त पदों जिनका अधिकतम वेतन रुपया 1770/- से कम है, का सृजन तथा चयन करने हेतु सक्षम है। शासन स्तर से उपरोक्त जानकारी दिये जाने के उपरांत अब इन पदों के सृजन की औपचारिक स्वीकृति निदेशक मण्डल द्वारा ही दी जानी है। अतएव निदेशक मण्डल से अनुरोध है कि 135 सहायक क्षेत्रीय प्रबन्धक स्तर के अधिकारियों (वेतनमान रुपया 900-1770) के पदों के सृजन किये जाने के प्रस्ताव पर विचार कर निर्णय लेने की अनुकम्पा करें ।

उल्लेखनीय है कि पल्लवन ट्रांसपोर्ट कंसल्टेन्सी सर्विसेस द्वारा 0.07 अधिकारी प्रतिशत की आवश्यकता का मानदंड निर्धारित किया है। उसके विपरीत परिवहन निगम में इस समय 0.03 अधिग्रारी प्रति बस कार्यरत है। स्पष्टतः देश के अन्य बड़े परिवहन निगमों जैसे आंध्र प्रदेश, मध्य प्रदेश, गुजरात एवं कर्णाटक परिवहन निगमों की तुलना में यह अनुपात बहुत ही कम है। आंध्र प्रदेश में यह अनुपात 0.07, महाराष्ट्र में 0.06, गुजरात में 0.06, कर्णाटक में 0.75 है। उत्तर प्रदेश राज्य सड़क परिवहन निगम में स्टाफ अधिकारी अनुपात 1.70 कर्मचारी प्रति अधिकारी आता है जब कि अन्य बड़े परिवहन निगमों में यह लगभग 1.10 से लेकर 1.20 के बीच में है। उपरोक्त परिप्रक्ष्य में ही 135 पदों के सृजन किये जाने का प्रस्ताव प्रस्तुत किया जा रहा है। उपरोक्त पर होने वाले व्यय का प्राविधान आंशिक रूप से वर्ष 1986-87 के आय व्यय में किया गया है तथा कमी पड़ने पर 86-87 के पुनरीक्षित बजट में शेष धनराशि का प्राविधान कर लिया जायेगा ।

निदेशक मण्डल से अनुरोध है वि उपरोक्त प्रस्ताव का अनुमोदन प्रदान करने की अनुकम्पा करे।

वि० के० दीवान

प्रबन्ध निदेशक

संकल्प

निदेशक मण्डल ने विचारोपरांत सहायक क्षेत्रीय प्रबन्धक स्तर के विभिन्न विधाओं के 135 पदों के सृजन किये जाने की अनुमति प्रदान की।"

Adoption

"मद संख्या 1 : निगम के पुनर्गठन के सन्दर्भ में विभिन्न विधाओं के सहायक क्षेत्रीय प्रबन्धक स्तर के 135 पदों के सृजन का प्रस्ताव।"

Order

"कार्यालय प्रबन्धक निदेशक,

उत्तर प्रदेश परिवहन निगम, लखनऊ।

संख्या 6466 सीएचक्यू/86/540 सीएचई/85 दिनांक: अक्टूबर 17, 1986

कार्यालय आदेश

उत्तर प्रदेश सड़क परिवहन निगम निदेशक मंडल की 98 वीं बैठक दिनांक 29-8-96 के संकल्प संख्या 1518/86 के निर्णय के अनुसार सहायक क्षेत्रीय प्रबन्धक स्तर के 135 पदों को अस्थाई रूप से दिनांक 28-2-87 तक के लिए वेतनमान रुपया 900-40-1100-50-1350-60-1770 में सृजित किया जाता है।

(वी०के० मित्तल)

प्रबन्ध निदेशक"

13. All petitioners were appointed against referred created posts initially on temporary basis on probation on different dates between 1986 to 1990 and got retired between 2013 to 2023, except one petitioner who will retire on 30.11.2026. Copy of appointment letter of Petitioner-1 is annexed alongwith this writ petition and condition no. 2 thereof being relevant is mentioned hereinafter:

"2-श्री रायजादा की सेवाएं रोड ट्रांसपोर्ट कारपोरेशन एक्ट 1950 के अंतर्गत बनायी जाने वाली सेवा विनियमावली के अधीन होगी और जब तक उक्त सेवा विनियमावली अन्तिम रूप से लागू नहीं हो जाती तब तक उनकी सेवाएं शासन के उन नियमों के अधीन होगी जो सरकारी सेवकों पर लागू होती हैं।"

14. During the service of petitioners, U.P. State Road Transport Corporation (*hereinafter referred to as "UPSRTC"*) with previous sanction of State Government in exercise of powers conferred by Clause (c) of sub-section (2) of Section 45 of Act, 1950 and in supersession of

all exiting regulations and orders on the subject makes the Uttar Pradesh State Road Transport Corporation Officers Service (General) Regulations, 1998 (*hereinafter referred to as "Regulations, 1998"*), for regulating the conditions of service of officers appointed to UPSRTC. Relevant Regulations 2, 17 and 25 are extracted hereinafter:-

"2. Application.- Except as otherwise expressed or implied, these regulations with such amendments or modifications, as may be made by the Board from time to time, shall apply to the officers who stood absorbed or have opted for service under the Corporation and to the officers appointed by the Corporation on or after first day of June, 1972 whether:-

(a) in a substantive capacity, or

(b) in an officiating capacity against a regular vacancy, or

(c) on adhoc basis, or

(d) in any other capacity whatsoever."

"17. Superannuation/Retirement Benefits.- The Board may decide as to the type of provident fund to be established for the welfare of the officers, namely, Contributory Provident Fund, Employees Provident Fund and Family Pension Scheme or General Provident Fund and/or Family Pension Scheme. The officer's contribution, the employer's contribution, the method of deduction, regulations regarding withdrawal shall be such as may be provided in the specific regulations prepared and approved by the Board for the establishment and operation of such provident fund schemes."

"25. Effect of Enforcement of these regulations.-(1) These regulations shall apply to all the officers of the Corporation who are in the service of the Corporation on the date of the commencement of these regulations and to those who join the said service after such commencement.

(2) The officers who are in the service of the Corporation shall give an undertaking within a month from the date of the commencement of these regulations that they have read and understood the regulations and accept the same. On refusal to accept these regulations, the Appointing Authority may consider termination of their employment on the basis of the terms and conditions of the employment. All the officers who join the said service after such commencement shall be required to give the said undertaking before joining the service in the Corporation."

15. The State Government issued a Government Order dated 20.10.2004, whereby an order was passed in regard to pension to

employees appointed between 01.06.1972 to 19.06.1981, when Regulations, 1981 were enforced. The same is mentioned hereinafter:

"विषय-उत्तर प्रदेश राजकीय रोडवेज संगठन के स्थान पर दिनांक 01-06-1972 को उत्तर प्रदेश राज्य सड़क परिवहन निगम के गठन के फलस्वरूप दिनांक 01.06.1972 से दिनांक 28.7.1982 के मध्य उत्तर प्रदेश राज्य सड़क परिवहन निगम में नियुक्त कार्मिकों को पेंशन की अनुमन्यता के सम्बन्ध।

महोदय

उपर्युक्त विषय पर मुझे यह कहने का निदेश हुआ है कि उत्तर प्रदेश राज्य सड़क परिवहन निगम मुख्यालय लखनऊ के पार्श्वकिंत पत्रों में प्राप्त प्रस्ताव पर सम्यक रूप में विचार किया गया और यह निर्णय लिया गया है कि उत्तर प्रदेश राज्य सड़क परिवहन निगम में दिनांक 01-06-1972 से उत्तर प्रदेश राज्य सड़क परिवहन निगम कर्मचारी (अधिकारियों से भिन्न) सेवा विनियमावली 1981. जो दिनांक 19-06-1981 को प्रवृत्त हुई है, के मध्य ऐसे पद जो उत्तर प्रदेश राजकीय रोडवेज संगठन में दिनांक 01-06-1972 के पूर्व पेंशनीय थे, पर नियुक्त कार्मिकों को पेंशन की अनुमन्यता पर शासन को कोई आपत्ति नहीं है और उक्त सेवा विनियमावली- 1981 के विनियम-39(1) (एक) के प्राविधान के अन्तर्गत दिनांक 19-6-1981 से परिवहन निगम में नियुक्त कार्मिकों को पेंशन अनुमन्य नहीं होगा।

2- उक्त कार्मिकों के पेंशन पर होने वाले समस्त व्ययभार का वहन उत्तर प्रदेश राज्य सड़क परिवहन निगम द्वारा अपने संसाधनों से स्वयं किया जायेगा एवं पेंशन का भुगतान परिवहन निगम द्वारा अपने माध्यम से कराया जायेगा और इसका कोई भी अंश राज्य सरकार द्वारा वहन नहीं किया जायेगा।

3- यह आदेश वित्त विभाग के अशासकीय पत्र संख्या-ई-9-524/दस-2004, दिनांक 29-9-04 में प्राप्त उनकी सहमति से जारी किया जा रहा है।"

16. There were some communications from State Government to Corporation on the issue of grant of pension. For reference communications dated 23.10.2008 and 12.06.2009 are reproduced hereinafter:

Communication dated 23.10.2008

"परिवहन निगम मुख्यालय,

लखनऊ

संख्या (जी) सीएचक्यू/02 टीसी दिनांक 23 अक्टूबर 2008

सेवा में,

उप सचिव

परिवहन अनुभाग-1.

उ०प्र० शासन,

लखनऊ।

विषय : उ०प्र० राज्य सड़क परिवहन निगम के अधिकारियों की सेवा शर्तों के सम्बन्ध में प्रत्यावेदन ।

महोदय

कृपया उपरोक्त विषयक शासन के पत्र संख्या -सी एस 132/30-1-2008) दिनांक 09-09-2008 का संदर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा श्री कमलेश: चन्द्र दिवाकर, मा० विधायक, बिल्हौर (ब०स०पा०) के दिनांक: रहित पत्र तथा उसके साथ सलग्न महामंत्री उ०प्र० राज्य सड़क परिवहन निगम अधिकारी संगठन, लखनऊ के पत्र दिनांक 03-06-2008 की छायाप्रति प्रेषित करते हुए प्रकरण में आख्या उपलब्ध कराने के निर्देश दिए गए हैं।

उ०प्र० राज्य सड़क परिवहन निगम अधिकारी संगठन लखनऊ के उक्त पत्र दिनांक 03-06-2008 में उल्लिखित बिन्दुओं पर स्थिति निम्नवत् है:-

1-आख्या की आवश्यकता नहीं है।

2-राजकीय रोडवेज में सहायक प्रधान प्रबन्धक का पद क्षेत्रों में विद्यमान था। निगम गठन के पश्चात् इस पद का परिवर्तित पदनाम सहायक क्षेत्रीय प्रबन्धक है। दिनांक 01-06-1972 के पूर्व सहायक प्रधान प्रबन्धक परिवर्तित पदनाम सहायक क्षेत्रीय. प्रबन्धक के पद राजकीय रोडवेज के थे और यह पद लोक सेवा आयोग, उत्तर प्रदेश की परिधि में थे।

3-दिनांक 01.06.1972 को राजकीय रोडवेज से उ०प्र० राज्य सड़क परिवहन निगम का गठन किया गया और परिवहन संगठन के अधिकारियों व कर्मचारियों का उ०प्र० परिवहन निगम में विलिनीकरण शासनादेश संख्या-राज्य सड़क 3414 / तीस-2-170/72 दिनांक 05-7-1972 निर्गत किया गया।

4-उ०प्र० राज्य सड़क परिवहन निगम का गठन होने के पश्चात शासनादेश संख्या-3123/30-1-19 एम/72 दिनांक 21 जुलाई, 1972 निर्गत किया गया। इस शासनादेश में उ०प्र० राज्य सड़क परिवहन निगम से परामर्श करने के पश्चात भर्ती आदि हेतु अर्हताएं, सेवा शर्तें निगम स्थापना के पूर्व उ०प्र० राजकीय रोडवेज में जैसी थी उसी भांति नये रिक्त पदों पर चयन किए जाने के लिए निर्धारित होगी, के आदेश दिए गए।

5-राज्य सड़क परिवहन निगम अधिनियम, 1950 (अधिनियम संख्या 64 सन् 1950) की धारा 45 की उप धारा (2) के खण्ड (ग) द्वारा प्रदत्त शक्ति का प्रयोग करके और इस विषय पर समस्त विद्यमान विनियमों और आदेशों का अधिक्रमण करके, उत्तर प्रदेश राज्य सड़क परिवहन निगम, राज्य सरकार की पूर्व मंजूरी से उत्तर प्रदेश राज्य सड़क परिवहन निगम अधिकारी सेवा में नियुक्ति की और नियुक्त अधिकारियों की सेवा की शर्तों और वेतनमानों तथा उसमें नियुक्त अधिकारियों की सेवा की शर्तों को विनियमित करने के लिए उत्तर प्रदेश राज्य सड़क परिवहन नियम अधिकारी सेवा चिनियमावली, 1998 प्रख्यापित की गयी है।

6-आख्या की आवश्यकता नहीं है।

7-आख्या की आवश्यकता नहीं है।

8-शासनादेश संख्या 3123/-1-19 एम/72 दिनांक 21-07-72 के द्वारा यह प्राविधान किया गया है कि जो 01 जून 1972 के पश्चात निगम द्वारा अपेन सेवा नियम तैयार करने तक रोडवेज के उन पदों के लिए जो निगम गठन के पूर्व लोक सेवा आयोग की परिधि में नियुक्ति आदि के लिए अर्हतायें व अन्य सेवा शर्त वही बनी रहेंगी, जैसी कि निगम की स्थापना के पूर्व राजकीय रोडवेज में थी। नये या रिक्त पदों पर चयन के लिये पदों की भर्ती विज्ञप्ति कर निगम द्वारा स्थापित चयन समिति अभ्यर्थियों का चयन कर निगम को नियुक्त लिये संस्तुत करेगी।

उ०प्र० राज्य सड़क परिवहन निगम अधिकारी सेवा विनियमावली वर्ष, 1998 में प्रख्यापित हुई है। वर्ष 1998 के पूर्व शासन दिनांक 21-07-1972 द्वारा निर्धारित प्रक्रिया के अन्तर्गत नियुक्त कार्मिकों को पेंशनरी आदि का लाभ शासकीय कार्मिकों की भांति राजकीय कोषागार से दिये जाने पर विचार किया जा सकता है।

9-वर्तमान में वर्ष 1998 से बनाई गयी अधिकारी सेवा विनियमावली वर्ष 1998 से नियुक्त अधिकारी पर लागू होगी।

भवदीया,

ह 0 23.10.00

(नीलम अहलावत)

मुख्य प्रधान प्रबन्धक (प्रशासन)''

Communication dated 12.06.2009

"सख्या 808/तीस-1-2009-5(108)/08 टीसी

प्रेषक

संध्या तोमर,

विशेष सचिव,

उत्तर प्रदेश शासन ।

सेवा में,

प्रबन्ध निदेशक,

उ०प्र० राज्य सड़क परिवहन निगम,

उत्तर प्रदेश, लखनऊ।

परिवहन अनुभाग-1 लखनऊ. दिनांक: 12 जून, 2009

विषय: अधिकारी सेवा विनियमावली, 1998 के प्रख्यापन के मध्य नियुक्त हुए, समस्त अधिकारियों को पेंशनरी लाभ दिये जाने सम्बन्धी मांग पर कार्यवाही कराया जाना।

महोदय

उपर्युक्त विषयक महामन्त्री उत्तर प्रदेश राज्य सड़क परिवहन निगम, अधिकारी संगठन, लखनऊ के सलग्न पत्र दिनांक 16-05-2009 के अवलोकन से विदित होता है कि-

(1) 01.06.1972 को उत्तर प्रदेश सरकार के विभाग "उत्तर प्रदेश राजकीय रोडवेज" को समाप्त करके उत्तर प्रदेश राज्य सड़क परिवहन निगम का गठन किया गया।

(2) रोडवेज के पदों को समाप्त करने एवं इसके कर्मचारियों को उत्तर प्रदेश राज्य सड़क परिवहन निगम में आमेलित करने के लिए दिनांक 28-04-1982 को एक नियमावली जारी की गयी।

(3) 01.06. 1972 के पहले रोडवेज के कतिपय पद लोक सेवा आयोग के क्षेत्रान्तर्गत थे। निगम बन जाने के बाद यह पद निगम के क्षेत्रान्तर्गत आ गये परन्तु इन पदों के लिए निगम सम्भवतः तत्काल कोई सेवा-विनियम नहीं बना सका। कोई समस्या न हो सम्भवतः इसीलिए 21-07-1972 को सरकार ने एक निर्देश जारी किया कि 01-06-1972 से निगम द्वारा सेवा नियम तैयार करने तक नियुक्ति की एवं अन्य सेवा शर्त यहीं रहेंगी जो निगम बनने के पहले उत्तर प्रदेश राजकीय रोडवेज में थी।

(4) उक्त प्रकार के अधिकारियों के लिये उत्तर प्रदेश राज्य सड़क परिवहन निगम अधिकारी सेवा नियमावली 1998 लागू हुई।

(5) उत्तर प्रदेश राज्य सड़क परिवहन निगम अधिकारी संगठन यह चाहते हैं कि 01-06-1972 से उत्तर प्रदेश राज्य परिवहन निगम अधिकारी सेवा नियमावली 1998 के प्रभाव में आने के बीच नियुक्त अधिकारियों को पेशन का लाभ दिया जाये।

2-इस सम्बन्ध में आपसे यह कहने का मुझे निर्देश हुआ है कि प्रथम दृष्टया अधिकारी संगठन की उक्त मांग औचित्यपूर्ण प्रतीत होती है। अतः कृपया नियमान्तर्गत कार्यवाही करने का कष्ट करें। इस सम्बन्ध में कोई कार्यही हो और शासन से किसी निर्देश/आदेश की आवश्यकता हो तो कृपया औचित्यपूर्ण प्रस्ताव बोर्ड से अनुमोदित करवाकर शासन को भेजने का कष्ट करें।

भवदीय,

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संध्या तोमर,

विशेष सचिव,

सलग्नक- यथोक्त"

17. The Petitioners have approached earlier before this Court by way of filing Writ-A No. 22832 of 2018, which was disposed of finally vide order dated 25.10.2018 with a liberty to State Government and Board of Directors of UPSRTC to consider the case of petitioners for pension. Relevant part of the order is extracted hereinafter:

"5. Heard learned counsel for the parties.

6. *Certain facts relevant for demand are beyond the pale of dispute. The Road Transport Corporation Act was incorporated by the State Government in exercise of power vested in Section 3 of the Road Transport Corporation Act, 1950. Section 34 of the Road Transport Corporation Act, 1950 deals with the conditions of service of the employees of the State Government and the U.P. State Road Transport Corporation and the powers of the State Government in regard thereto. The relevant provision is being extracted hereunder for ease of reference :-*

"34. Direction by the State Government.-

(1) The State Government may, after consultation with a Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation, and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks.

(2) In the exercise of its powers and performance of its duties under this Act, the Corporation shall not depart from any general instructions issued under sub-section (1) except with the previous permission of the State Government."

7. *The service conditions of the officers of the U.P. State Road Transport Corporation were promulgated on 10.9.1998. The service rules for the officers of the U.P. State Road Transport Corporation are called U.P. State Road Transport Corporation Officers Service (General) Regulations 1998. All the petitioners were appointed prior to the promulgation of the service rules on 10.9.1998.*

8. *In exercise of powers under Section 34(1) of the Road Transport Corporation Act, 1950, an order was taken out by the Governor on 21.7.1972. The Government Order dated 21.7.1972 which is referable to Section 34 (1) of the Road Transport Corporation Act, 1950 provides that from 01.06.1972 till the framing of the service rules by the U.P.S.R.T.C., the posts in the U.P.S.R.T.C. which came within the purview of the U.P. Public Service Commission prior to the incorporation of the U.P.S.R.T.C., shall be governed and regulated by the service rules applicable to the employees of the U.P. State Roadways, prior to the incorporation of the U.P.S.R.T.C. The claim of the petitioners is that since they were appointed subsequent to 1.6.1972 and prior to the promulgation of the service regulations framed by the U.P. State Road Transport Corporation in 1998, they are entitled to be governed by the G.O. dated 21.7.1972. They claim pensionary benefits on the foot of the Government Order dated 21.7.1972.*

9. *Copious correspondence was exchanged between the U.P. State Road Transport Corporation and authorities of the State Government*

regarding the aforesaid pensionary rights claimed by the petitioner on the footing of the government order of 21.7.1972. By way of an exemplar a communication dated 23.10.2008 sent by the Chief General Manager, (Administration), U.P. State Road Transport Corporation to the competent authority the State Government recorded that there were a number of posts which came within the purview of U.P. Public Service Commission and prior to the creation of the corporation and continue to exist in the corporation. The communication dated 23.10.2008 further records that the service regulations of the officers of the U.P. State Road Transport Corporation were framed in the year 1998. Hence officers appointed from 01.06.1972 to 1998 would be entitled for pensionary benefits. The letter recommends consideration of the case of such officials to be granted pension from the State exchequer. In a communication sent by the Special Secretary, Govt. of U.P. to the Managing Director, U.P. State Road Transport Corporation dated 12.6.2009 states that prima facie the demands of the officers for pension has merit. On 24.11.2017 the Managing Director, U.P. State Road Transport Corporation sent a communication to the Principal Secretary, Transport Department, Govt. of U.P., Lucknow. The letter dated 24.11.2017 after giving a brief back drop of the aforesaid controversy and communications in this regard refers to the Government Order dated 21.07.1972, taken out under Section 34(1) of the Road Transport Corporation Act, 1950 and other communications between the State Government and the U.P. State Road Transport Corporation. The letter dated 24.11.2017 most importantly records that the U.P. Road Transport Corporation Ltd. will bear the financial burden of payment of pension to its officers. The pension bill of similarly situated pensioners in the U.P.S.R.T.C. is being borne by the U.P.S.R.T.C. Such pensioners are being paid out by the financial resources of the U.P. State Road Transport Corporation. Finally the aforesaid interactive correspondence between the State Government and the U.P. State Road Transport Corporation culminated in a letter of the State Government sent by the Under Secretary, Govt. of U.P., on 25.1.2018. The letter directs the Managing Director of the U.P. State Road Transport Corporation, Lucknow to process and forward the resolution of the Board of Directors of the U.P. State Road Transport Corporation for grant of pensionary benefits to the officers appointed between 1.6.1972 and 2.10.1998.

10. The meeting of Board of Directors was convened on several dates including 17.7.2018 and 18.9.2018. However, on both the dates the Board of Directors failed to pass a resolution in this regard.

11. Considering the submissions made at the Bar and the relief claimed in the instant writ petition, no useful purpose would be served by keeping this writ petition pending in this court. With the consent of learned counsel for the parties the matter is being disposed of finally at the admission stage.

12. The claim of the petitioners for pension has to be decided by the competent authority. The claim has been made on the footing of the government order issued under the Road Transport Corporation Act, 1950 and correspondence between the State Government and the U.P. State Road Transport Corporation, on the subject. The decision cannot be postponed indefinitely.

13. The matter is remitted back to the Board of Directors of the U.P. State Road Transport Corporation. The Board of Director are arrayed as respondent no.3 in the instant writ petition. A mandamus is issued to the Board of Directors to the U.P. State Road Transport Corporation commanding the Board to pass a resolution in regard to the claim of the pension of the officers appointed between the period 1.6.1972 to 2.10.1998. The Board shall take a decision in the matter within a period of three months from the date of receipt of certified copy of this order along-with fresh representation made by such officers in that regard. The final resolution passed by the Board in the matter shall be communicated to the State Government within period of one month from the date of the resolution. The State Government shall take consequential action on the resolution passed by the State Government as expeditiously as possible preferably within a period of six months from the date of receipt of such resolution of the Board of Directors.

14. It is clarified that this court has not gone into veracity or the legitimacy of the claim of the petitioners for grant of pension. Grant of pensionary benefits is the prerogative of the Board of Directors of the U.P.S.R.T.C. and the State Government. Grant of pension and other service conditions are policy decisions. It is not the province of the courts to issue any directions to adopt any preferred policy option. It is for the State Government and the Board of Directors of the U.P.S.R.T.C. to take the final decision. There are huge financial implications which need to be considered by the competent authorities. All relevant considerations have to be factored in before a final decision is made. The rights of the petitioners in the light of the discussion in the preceding paragraphs is limited to the consideration of their case. The nature of the decision in this regard is the sole province of the said authorities. It is for the Board of Directors and the State Government to apply their minds independently and take a decision in that regard.

15. The writ petition is disposed of finally.”

18. In pursuance of referred liberty, the petitioners submitted a joint representation dated 03.12.2018 to the Board of Directors, UPSRTC through its Chairman.

19. The Director of Board of Corporation in its 220th meeting on 25.01.2019 considered the issue of grating pension to officers appointed

between 01.06.1972, when Corporation came into existence, and 03.10.1998, when Regulations, 1998 came into force. Board took decision on said proposal and on ground that the Corporation has suffered loss between April, 2018 to December, 2018 of about Rs. 98.10 crores in comparison of same period in the year 2017, rejected claim of granting pension. For reference the 'Proposal' and 'Decision' is mentioned hereinafter:

"परिवाहन निगम के गठन दिनांक 01.06.1972 से अधिकारी सेवा नियमावली, 1988 के प्रख्यापन दिनांक 10.09.1998 के मध्य नियुक्त हुये परिवहन निगम के अधिकारियों को पेंशनरी लाभ प्रदान किये जाने के सम्बंध में मा० उच्च न्यायालय के निर्णय दिनांक 25.10.2018 के अनुपालन के सम्बंध में।	निदेशक मण्डल द्वारा एजेण्डा टिप्पणी का अवलोकन कर निम्नवत् निर्णय लिया गया:— 1. वर्तमान में 01.06.1972 से 19.06.1981 के मध्य नियुक्त हुये व निगम की पेंशन प्राप्त कर रहे अधिकारियों को अनुमन्य की गयी पेंशन सुविधा शासन के निर्देशों के अनुरूप है या नहीं यह जाँच कराकर समुचित प्रस्ताव निदेशक मण्डल के समक्ष प्रस्तुत किया जाय। 2. वर्तमान वित्तीय वर्ष में सातवां वेतनमान अनुमन्य किये जाने एवं डीजल मदों में हुई अप्रत्याशित वृद्धि से निगम की लाभदायकता पर प्रतिकूल प्रभाव पड़ा है। जिससे निगम की लाभदायकता में कमी आयी है, जिसमें कि अप्रैल 2018 से दिसम्बर 2018 तक की अवधि में गत वर्ष 2017 की इसी अवधि में हुये रु० 98.10 करोड़ के लाभ के सापेक्ष रु० 24.82 करोड़ की हानि हुयी है। इस परिस्थिति में प्रस्तुत प्रस्ताव पर होने वाले अतिरिक्त व्यय भार के दृष्टिगत संस्तुति किया जाना औचित्यपूर्ण नहीं पाया गया।"
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20. Initially this writ petition was filed to challenge the aforesaid resolution dated 17.01.2019 with prayer to grant pension to petitioners who were appointed between 01.06.1972 to 03.10.1998.

21. During pendency of this writ petition this Court has passed orders on 17.03.2023 and 11.04.2023 and for reference the same are reproduced hereinafter:

Order dated 17.03.2023

“Heard Sri Samir Sharma, learned Senior Advocate assisted by Sri Ajay Kumar Srivastava and Sri S.K. Misra, learned counsel for the respondents/UPSTRC.

The dispute with regard to payment of pension to the petitioners was before this Court in Writ 'A' No.22832 of 2018 (Sandeep Raizada and 26 others Vs. State of U.P. & 4 others). The relevant portion of the said judgment dated 25.10.2018, reads as under:-

"6. Certain facts relevant for demand are beyond the pale of dispute. The Road Transport Corporation Act was incorporated by the State Government in exercise of power vested in Section 3 of the Road Transport Corporation Act, 1950. Section 34 of the Road Transport Corporation Act, 1950 deals with the conditions of service of the employees of the State Government and the U.P. State Road Transport Corporation and the powers of the State Government in regard thereto. The relevant provision is being extracted hereunder for ease of reference :-

"34. Direction by the State Government.?

(1) The State Government may, after consultation with a Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation, and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks.

(2) In the exercise of its powers and performance of its duties under this Act, the Corporation shall not depart from any general instructions issued under sub-section (1) except with the previous permission of the State Government."

7. The service conditions of the officers of the U.P. State Road Transport Corporation were promulgated on 10.9.1998. The service rules for the officers of the U.P. State Road Transport Corporation are called U.P. State Road Transport Corporation Officers Service (General) Regulations 1998. All the petitioners were appointed prior to the promulgation of the service rules on 10.9.1998.

8. In exercise of powers under Section 34(1) of the Road Transport Corporation Act, 1950, an order was taken out by the Governor on 21.7.1972. The Government Order dated 21.7.1972 which is referable to Section 34 (1) of the Road Transport Corporation Act, 1950 provides that from 01.06.1972 till the framing of the service rules by the U.P.S.R.T.C., the posts in the U.P.S.R.T.C. which came within the purview of the U.P. Public Service Commission prior to the incorporation of the U.P.S.R.T.C., shall be governed and regulated by the service

rules applicable to the employees of the U.P. State Roadways, prior to the incorporation of the U.P.S.R.T.C. The claim of the petitioners is that since they were appointed subsequent to 1.6.1972 and prior to the promulgation of the service regulations framed by the U.P. State Road Transport Corporation in 1998, they are entitled to be governed by the G.O. dated 21.7.1972. They claim pensionary benefits on the foot of the Government Order dated 21.7.1972.

9. Copious correspondence was exchanged between the U.P. State Road Transport Corporation and authorities of the State Government regarding the aforesaid pensionary rights claimed by the petitioner on the footing of the government order of 21.7.1972. By way of an exemplar a communication dated 23.10.2008 sent by the Chief General Manager, (Administration), U.P. State Road Transport Corporation to the competent authority the State Government recorded that there were a number of posts which came within the purview of U.P. Public Service Commission and prior to the creation of the corporation and continue to exist in the corporation. The communication dated 23.10.2008 further records that the service regulations of the officers of the U.P. State Road Transport Corporation were framed in the year 1998. Hence officers appointed from 01.06.1972 to 1998 would be entitled for pensionary benefits. The letter recommends consideration of the case of such officials to be granted pension from the State exchequer. In a communication sent by the Special Secretary, Govt. of U.P. to the Managing Director, U.P. State Road Transport Corporation dated 12.6.2009 states that prima facie the demands of the officers for pension has merit. On 24.11.2017 the Managing Director, U.P. State Road Transport Corporation sent a communication to the Principal Secretary, Transport Department, Govt. of U.P., Lucknow. The letter dated 24.11.2017 after giving a brief back drop of the aforesaid controversy and communications in this regard refers to the Government Order dated 21.07.1972, taken out under Section 34(1) of the Road Transport Corporation Act, 1950 and other communications between the State Government and the U.P. State Road Transport Corporation. The letter dated 24.11.2017 most importantly records that the U.P. Road Transport Corporation Ltd. will bear the financial burden of payment of pension to its officers. The pension bill of similarly situated pensioners in the U.P.S.R.T.C. is being borne by the U.P.S.R.T.C. Such pensioners are being paid out by the financial resources of the U.P. State Road Transport Corporation. Finally the aforesaid interactive correspondence between the State Government and the U.P. State Road Transport Corporation

culminated in a letter of the State Government sent by the Under Secretary, Govt. of U.P., on 25.1.2018. The letter directs the Managing Director of the U.P. State Road Transport Corporation, Lucknow to process and forward the resolution of the Board of Directors of the U.P. State Road Transport Corporation for grant of pensionary benefits to the officers appointed between 1.6.1972 and 2.10.1998.

10. The meeting of Board of Directors was convened on several dates including 17.7.2018 and 18.9.2018. However, on both the dates the Board of Directors failed to pass a resolution in this regard.

11. Considering the submissions made at the Bar and the relief claimed in the instant writ petition, no useful purpose would be served by keeping this writ petition pending in this court. With the consent of learned counsel for the parties the matter is being disposed of finally at the admission stage.

12. The claim of the petitioners for pension has to be decided by the competent authority. The claim has been made on the footing of the government order issued under the Road Transport Corporation Act, 1950 and correspondence between the State Government and the U.P. State Road Transport Corporation, on the subject. The decision cannot be postponed indefinitely.

13. The matter is remitted back to the Board of Directors of the U.P. State Road Transport Corporation. The Board of Director are arrayed as respondent no.3 in the instant writ petition. A mandamus is issued to the Board of Directors to the U.P. State Road Transport Corporation commanding the Board to pass a resolution in regard to the claim of the pension of the officers appointed between the period 1.6.1972 to 2.10.1998. The Board shall take a decision in the matter within a period of three months from the date of receipt of certified copy of this order along-with fresh representation made by such officers in that regard. The final resolution passed by the Board in the matter shall be communicated to the State Government within period of one month from the date of the resolution. The State Government shall take consequential action on the resolution passed by the State Government as expeditiously as possible preferably within a period of six months from the date of receipt of such resolution of the Board of Directors.

14. It is clarified that this court has not gone into veracity or the legitimacy of the claim of the petitioners for grant of pension. Grant of pensionary benefits is the prerogative of the Board of Directors of the U.P.S.R.T.C. and the State Government. Grant of pension and other service conditions are policy decisions. It is not the province of the courts to issue any directions to adopt

any preferred policy option. It is for the State Government and the Board of Directors of the U.P.S.R.T.C. to take the final decision. There are huge financial implications which need to be considered by the competent authorities. All relevant considerations have to be factored in before a final decision is made. The rights of the petitioners in the light of the discussion in the preceding paragraphs is limited to the consideration of their case. The nature of the decision in this regard is the sole province of the said authorities. It is for the Board of Directors and the State Government to apply their minds independently and take a decision in that regard.

15. The writ petition is disposed of finally."

Despite there being such specific directions requiring the Board to consider the claim of the petitioners, the Board in its 220th Meeting dated 17.01.2019 by Resolution No. 41 did not consider the claim of the petitioners on merits; rather refused to consider the same on the ground that the Corporation is not in a financial condition to pay the same. The said decision of the Board in itself is a gross violation of the directions given by this Court.

The present petition was filed in the year 2019 and even during the last four years the Board has refused to take any decision on merits in itself speak the conduct of the respondents. Hence, a cost of Rs.25,000/- with regard to each petitioner is to be paid by the Managing Director, U.P. State Road Transport Corporation, Lucknow on or before 11.04.2023.

The Managing Director, U.P. State Road Transport Corporation, shall also ensure that the decision on merits is taken by the Board in furtherance of the directions of this Court in the judgment dated 25.10.2018 in Writ 'A' No.22832 of 2018, through his personal affidavit before this Court by the next date. In case of failure to comply with any of the direction, the Managing Director, U.P.S.R.T.C., shall be present in the Court on the next date.

List this case on 11.04.2023."

Order dated 11.04.2023

"By order dated 17.03.2023 passed by this Court, the following directions were issued:

"Despite there being such specific directions requiring the Board to consider the claim of the petitioners, the Board in its 220th Meeting dated 17.01.2019 by Resolution No. 41 did not consider the claim of the petitioners on merits; rather refused to consider the same on the ground that the Corporation is not in a financial condition to pay the same. The said decision of the Board in itself is a gross violation of the directions given by this Court.

The present petition was filed in the year 2019 and even during the last four years the Board has refused to take any decision on merits in itself speak the conduct of the respondents. Hence, a cost of Rs.25,000/- with regard to each petitioner is to be paid by the Managing Director, U.P. State Road Transport Corporation, Lucknow on or before 11.04.2023.

The Managing Director, U.P. State Road Transport Corporation, shall also ensure that the decision on merits is taken by the Board in furtherance of the directions of this Court in the judgment dated 25.10.2018 in Writ 'A' No.22832 of 2018, through his personal affidavit before this Court by the next date. In case of failure to comply with any of the direction, the Managing Director, U.P.S.R.T.C., shall be present in the Court on the next date.

List this case on 11.04.2023."

Today, an application for exemption along with compliance affidavit is filed. In the application for exemption there is no mention that order dated 17.03.2023, has been complied with regard to both directions. It merely prays for exemption of personal appearance of the Managing Director, U.P.S.R.T.C. today. In Paragraph 03 of the affidavit, it is stated that with regard to payment of cost amounting to Rs.25,000/- to each petitioner by order dated 17.03.2023, the same is assailed in Special Appeal No.182 of 2023 filed on 28.03.2023.

Learned counsel for respondents/Corporation admits that till date no stay order is granted in the said special appeal. Paragraph 03, of application also states that some more time may be granted to pay cost and case be fixed after the date fixed in special appeal. The prayer on the face of it is vague and cannot be accepted. Two days' further time is granted to the respondents to comply with the order for payment of cost as directed by order dated 17.03.2023, failing which the Managing Director, U.P.S.R.T.C. shall be present in the Court. It goes without saying that costs paid shall be subject to the decision passed in special appeal.

Put up on 13.04.2023, amongst top ten cases in the additional cause list."

22. Subsequently, the Board passed two resolutions dated 06.04.2023 and 19.10.2023, therefore, two amendment applications were filed being Amendment Applications No. 18 of 2023 and 22 of 2023 to challenge the resolution of Board of Directors of Respondent-Corporation dated 06.04.2023 and 18.10.2023. These amendment applications were allowed vide order dated 02.05.2024 and accordingly amended writ petition was filed. For reference 'Proposal' and 'Resolution' adopted by

Board of Directors dated 06.04.2023 and 18.10.2023 are reproduced hereinafter:

Proposal and Resolution dated 06.04.2023

“3. रिट याचिका संख्या: 6954/2019 संदीप रायजादा व 26 अन्य बनाम स्टेट आफ यू०पी० व अन्य में मा० उच्च न्यायालय द्वारा पारित आदेश दिनांक 17.03.2023 के अनुपालन में अधिकारी सेवा विनियमावली 1998 के प्रख्यापन दिनांक 10.09.1998 के मध्य नियुक्त हुए अधिकारियों को पेन्शनरी लाभ प्रदान किये जाने हेतु निदेशक मण्डल द्वारा मेरिट पर निर्णय लिये जाने के सम्बन्ध में।	याचीगणों की पेंशन अनुमन्यता की मांग के सम्बन्ध में निदेशक मण्डल ने सम्यक विचारोपरान्त पाया कि:- 1- शासनादेश संख्या- 1470/30-2-2004-218/96, दिनांक 20.10.2004 में उल्लेख है कि उत्तर प्रदेश राज्य सड़क परिवहन निगम में दिनांक 01.06.1972 से उत्तर प्रदेश राज्य सड़क परिवहन निगम कर्मचारी (अधिकारियों से भिन्न) सेवा विनियमावली-1981 जो दिनांक 19.06.1981 को प्रवृत्त हुई है. के मध्य ऐसे पद जो उत्तर प्रदेश राजकीय रोडवेज संगठन में दिनांक 01.06.1972 के पूर्व पेंशनीय थे पर नियुक्त कार्मिकों को पेंशन की अनुमन्यता पर शासन को कोई आपत्ति नहीं है और उक्त सेवा विनियमावली - 1981 के विनियम 39(1) (एक) के प्राविधान के अन्तर्गत दिनांक 19.06.1981 से परिवहन निगम में नियुक्त कार्मिकों को पेंशन अनुमन्य नहीं होगा। 2- शासनादेश संख्या- 3123/30/1/19 एन/72 दिनांक 21.07.1972 में यह उल्लिखित है कि दिनांक 01.06.1972 के पश्चात निगम द्वारा अपने सेवा नियम तैयार करने तक, रोडवेज के उन पदों के लिए जो निगम के गठन के पूर्व लोक सेवा आयोग की परिधि में थे, नियुक्ति आदि के लिए अर्हताएं तथा अन्य सेवा शर्तें वहीं बनी रहेंगी जैसी कि निगम की स्थापना के पूर्व उत्तर प्रदेश राजकीय रोडवेज में थीं। याचीगण शासनादेश दिनांक 21.07.1972 के प्रभावी होने के बाद नियुक्त हुए हैं अगर शासनादेश प्रभावी है भी तो उन पर प्रभावी है जो उस तिथि को नियुक्त थे न कि वो जो भविष्य में नियुक्त होंगे। इस संबंध में उल्लेखनीय है कि वर्ष 1985 में
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	उ० प्र० राज्य सड़क परिवहन निगम में पल्लचन स्कीम लागू होने पर निदेशक मण्डल की 98 वीं बैठक दिनांक 29.08.1986 में पारित 'सकल्प संख्या-1518/86 द्वारा सहायक क्षेत्रीय प्रबन्धक स्तर के विभिन्न विधाओं के 135 पदों का सृजन किया गया। उक्त पद सृजित होने के उपरांत प्रबन्ध प्रशिक्षणार्थियों (Management trainee) का चयन किया गया और उनके द्वारा 01 वर्ष का सफलतापूर्वक प्रशिक्षण पूर्ण करने के फलस्वरूप सहायक क्षेत्रीय प्रबन्धक के पद पर वर्ष 1986 से नियुक्तियां की गयीं। उपरोक्त वर्णित स्थिति से यह स्पष्ट है कि शासनादेश दिनांक 21.07.1972 उन पदों हेतु है जो निगम के गठन से पूर्व उ०प्र० लोक सेवा आयोग की परिधि में थे, जबकि याचीगणों की नियुक्ति निदेशक मण्डल द्वारा नवसृजित 135 पदों पर पूर्व से भिन्न पद्धति से की गयी। 3 अधिकारी सेवा विनियमावली 1998 पूर्व व्यापी प्रभाव (Retrospective effect) से लागू है, जिसमें उसके प्रभावी होने की तिथि 01.06.1972 वर्णित है। याचीगणों के नियुक्ति पत्र में वर्णित है कि उनकी सेवा भविष्य में बनने वाली विनियमावली के अधीन होगी। अधिकारी सेवा (सामान्य) विनियमावली, 1998 में पेंशन अनुमन्य करने हेतु बाध्यकारी नहीं है। अतः उपरोक्त समस्त तथ्यों के दृष्टिगत दिनांक 19.06.1981 से दिनांक 10.09.1998 के मध्य नियुक्त अधिकारियों को पेंशन अनुमन्य किया जाना औचित्यपूर्ण नहीं है।"
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Proposal and Resolution dated 18.10.2023

"परिवाहन निगम के गठन दिनांक 01.06.1972 से उ० प्र० राज्य सड़क परिवहन निगम में अधिकारी सेवा विनियमावली 1998 लागू होने की तिथि दिनांक 10.09.1998 के मध्य नियुक्त अधिकारियों को पेंशनरी	निदेशक मण्डल द्वारा एजेण्डा टिप्पणी का अवलोकन कर प्रस्तावित संकल्प का निम्नवत अनुमोदन प्रदान किया गया:- निदेशक मण्डल ने दिनांक 28 अप्रैल 1982 के पश्चात तथा दिनांक 10 सितंबर 1998 के पूर्व नियुक्त अधिकारियों के पेंशन की देयता के बारे में विस्तृत रूप से गहन चर्चा के पश्चात इस
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लाभ दिये जाने के सम्बन्ध में निदेशक मण्डल के समक्ष प्रस्तुत संशोधित एजेण्डा टिप्पणी।	निर्णय पर पहुंचा कि सरकारी सेवकों पर लागू सेवा शर्तें जो राजकीय परिवहन संगठन के कर्मचारियों पर लागू थी उन सबका अन्तिम रूप से <i>The UP State Roadways Organisation (Abolition of Post and Absorption of the Employees) Rules 1982</i> जो दिनांक 28 अप्रैल 1982 को लागू हुआ के द्वारा संगठन के समस्त सृजित पदों पर नियुक्त अधिकारियों को जो निगम में प्रतिनियुक्ति पर कार्यरत किये गये को अन्तिम रूप से दिनांक 28 अप्रैल 1982 को निगम के कर्मचारी/अधिकारी के रूप में सम्मिलित कर लिया गया और राजकीय संगठन के समस्त पद समाप्त कर दिये गये और सरकारी सेवकों की सेवा शर्तें केवल उन कर्मचारियों / अधिकारियों पर लागू थी, जो 29 अप्रैल 1982 के पूर्व राजकीय संगठन के पदों पर नियुक्त किये गये थे। दिनांक 28 अप्रैल 1982 के बाद निगम के द्वारा विभिन्न पदों का सृजन किया गया और उन पर नियुक्तियां नियुक्ति पत्र में लगायी गयी शर्तों के साथ की गयी कि उनकी यह नियुक्ति विनियमावली जो निगम के द्वारा बनायी जायेगी, उसके अधीन होगी और उन्हें विनियमावली मान्य होगी। उक्त शर्त के साथ ही विनियमावली 1998 बनाने से पूर्व नियुक्त अधिकारियों ने सेवा स्वीकार किया, इस तरह से उक्त शर्त उन पर बाध्यकारी है। <i>The U.P State Roadways Organisation (Abolition of Post and Absorption of the Employees) Rules, 1982</i> जो दिनांक 03 अक्टूबर 1998 को विज्ञापित की गयी जो दिनांक 01.06 1972 से लागू है और उन कर्मचारियों / अधिकारियों को छोड़कर जो राजकीय संगठन में नियुक्त या राजकीय संगठन के पद पर नियुक्त किये गये थे और जिन्हें दिनांक 28 अप्रैल 1982 को निगम में सम्मिलित किया गया, को छोड़कर अन्य समस्त कर्मचारियों/अधिकारियों पर लागू है और विनियमावली में पेंशन की व्यवस्था न
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	होने के कारण तथा अंशदायी भविष्य निधि की व्यवस्था होने के कारण पेंशन देय नहीं है क्योंकि विनियम 25 सपठित विनियम 17 के तहत विनियमावली समस्त अधिकारियों को स्वीकार है और किसी भी अधिकारी ने विनियमावली को स्वीकार करने से इन्कार नहीं किया है।"
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23. A third amendment application, being Amendment Application No. 25 of 2024, was filed to challenge the amended agenda dated 27.06.2024 but neither it was pressed nor considered by this Court. However, for reference said resolution is also reproduced hereinafter:

"मद संख्या- 38 परिवहन निगम के गठन दिनांक 01.06.1972 से उ०प्र० राज्य सड़क परिवहन निगम में अधिकारी सेवा विनियमावली 1998 लागू होने की तिथि दिनांक 10.09.1998 के मध्य नियुक्त अधिकारियों को पेंशनरी लाभ दिये जाने के सम्बन्ध में निदेशक मण्डल के समक्ष प्रस्तुत संशोधित एजेण्डा टिप्पणी:-

1. निदेशक मण्डल को अवगत कराना है कि विगत में निदेशक मण्डल की 246 वीं बैठक दिनांक 18.10.2023 को मद सं० 20 पर प्रस्तुत एजेण्डा पर पारित संकल्प (अनुलग्नक-1) के क्रम में दिनांक 19.06.1981 से दिनांक 28.04.1982 के मध्य नियुक्त अधिकांश कार्मिकों द्वारा पेंशन अनुमन्य/पात्रता के सम्बन्ध में प्रार्थना पत्र प्रस्तुत / प्रेषित किये जा रहे हैं।

2. इस सम्बन्ध में निदेशक मण्डल को अवगत कराना है कि शासनादेश सं०-1470/30-2-2004-218/96 दिनांक 20.10.2004 (अनुलग्नक-2) में निम्नवत उल्लेख है:-

उत्तर प्रदेश राज्य सड़क परिवहन निगम कर्मचारी (अधिकारियों से भिन्न) सेवा विनियमावली 1981, जो दिनांक 19.06.1981 को प्रवृत्त हुयी है, के मध्य ऐसे पद, जो उत्तर प्रदेश राजकीय रोडवेज संगठन में दिनांक 01.06.1972 के पूर्व पेंशनीय थे, पर नियुक्त कार्मिकों को पेंशन की अनुमन्यता पर शासन को कोई आपत्ति नहीं है और उक्त सेवा विनियमावली-1981 के विनियम-39 (1) (एक) के प्राविधान के अन्तर्गत दिनांक 19.06.1981 से परिवहन निगम में नियुक्त कार्मिकों को पेंशन अनुमन्य नहीं होगा।

3 . उक्त के अतिरिक्त निदेशक मण्डल यह भी अवगत कराना है कि The Uttar Pradesh State Roadways Organisation (Abolition of Posts and Absorbtion of Employees) Rules 1982 जो अधिसूचना संख्या-2051/XXX-2-170-N-72 दिनांक 28.04.1982 (अनुलग्नक-3)

द्वारा अधिसूचित की गयी हैं, के विनियम 2 (ii) व 3 (i) में क्रमशः कार्मिकों व इन नियमों के लागू होने को निम्नलिखित प्रकार परिभाषित किया गया है:-

2 (ii) 'Employee' means the Government servant employed in U.P. State Roadways Organisation and working on deputation with the Corporation.

3 (i) These rules shall apply to the U.P. State Roadways Organisation employees working on deputation with the Uttar Pradesh State Road Transport Corporation.

4. उपरोक्त विनियमों से स्पष्ट है कि The Uttar Pradesh State Roadways Organisation (Abolition of Posts and Absorption of Employees) Rules 1982 योवल उन्हीं कार्मिकों पर लागू थे, जो उ०प्र० राज्य सड़क परिवहन निगम के गठन दिनांक 01.06.1972 के पूर्व उ०प्र० राजकीय रोडवेज संगठन में कार्यरत थे तथा उ०प्र० राज्य सड़क परिवहन निगम के गठन दिनांक 01.06.1972 के पश्चात परिवहन निगम में प्रतिनियुक्ति (deputation) पर माने गये थे।

5. उ०प्र० राज्य सड़क परिवहन निगम के गठन दिनांक 01.06.1972 के पश्चात परिवहन निगम द्वारा नियुक्त कार्मिकों पर The Uttar Pradesh State Roadways Organisation (Abolition of Posts and Absorption of Employees) Rules 1982, अधिसूचना संख्या-2051/XXX-2-170-N-72 दिनांक 28.04.1982 को अधिसूचित की गयी है, लागू नहीं हैं।

6. दिनांक 18.10.2023 को निदेशक मण्डल के समक्ष प्रस्तुत एजेण्डा एवं पारित संकल्प के अनुसार परिवहन निगम द्वारा दिनांक 28.04.1982 के बाद निगम द्वारा सृजित पदों के विरुद्ध नियुक्तियां प्रारम्भ की गयी एवं नियुक्ति पत्र में लगायी गयी शर्तों के साथ की गयी कि उनकी यह नियुक्ति, विनियमावली, जो निगम के द्वारा बनायी जायेगी, उसके आधीन होगी और उन्हें नियमावली मान्य होगी।

7. उपरोक्त के सम्बन्ध में स्पष्ट करना है कि निगम द्वारा अपने गठन दि० 01.06.1972 के उपरान्त ही, निगम द्वारा सृजित पदों के विरुद्ध नियुक्तियां प्रारम्भ कर दी गयी थी तथा नियुक्ति पत्र में इस शर्त का भी समावेश किया जाना प्रारम्भ कर दिया गया था कि यह नियुक्तियां निगम द्वारा रोड ट्रांसपोर्ट कार्पोरेशन एक्ट-1950 की धारा 45 के अन्तर्गत बनाये जाने वाले नियम पूर्णतया प्रत्येक पर लागू होंगे।

उदाहरणार्थ दिनांक 28.04.1982 से पूर्व वर्ष 1978 में निगम द्वारा सहायक क्षेत्रीय प्रबन्धकों के पद सृजित करते हुए इन सृजित पदों के विरुद्ध सीधी भर्ती से नियुक्त किये गये अधिकारियों के नियुक्ति आदेश संख्या-6313/सी.एच.क्यू. /78/ 404 / सी. एच.ई/ 78 दिनांक 04.11.1978 (अनुलग्नक-4) में यह स्पष्ट उल्लेख है कि यह नियुक्तियाँ निगम द्वारा सृजित पदों के विरुद्ध की जा रही है एवं इस नियुक्ति आदेश के शर्त सं०-5 में यह अंकित है कि यह नियुक्तियाँ निगम द्वारा बनायी जाने वाली सेवा नियमावली के अधीन होंगी।

शासनादेश सं०-1470/30-2- 2004-218/96, दिनांक 20.10.2004 के अनुसार, उत्तर प्रदेश राज्य सड़क परिवहन निगम कर्मचारी (अधिकारियों से भिन्न) सेवा विनियमावली 1981, जो दिनांक 19.06.1981 को प्रवृत्त हुयी है. के मध्य ऐसे पद, जो उत्तर प्रदेश राजकीय रोडवेज संगठन में दिनांक 01.06.1972 के पूर्व पेंशनीय थे, पर नियुक्त कार्मिकों को पेंशन की अनुमन्यता पर शासन को कोई आपत्ति नहीं है और उक्त सेवा विनियमावली-1981 के विनियम-39(1) (एक) के प्राविधान के अन्तर्गत दिनांक 19.06.1981 से परिवहन निगम में नियुक्त कार्मिकों को पेंशन अनुमन्य नहीं होगा।

अतः निदेशक मण्डल से अनुरोध है कि उपरोक्त वर्णित स्थिति से अवगत होते हुए प्रस्तुत एजेण्डा टिप्पणी का अनुमोदन प्रदान करने का कष्ट करें।"

Submission on behalf of Petitioners

24. Sri Samir Sharma, learned Senior Advocate assisted by Sri A.K. Srivastava and Sri Himanshu Agrawal, learned counsel for petitioners, submitted that service conditions of petitioners who were appointed much prior to Regulations, 1998 came into force, were protected by Government Order dated 21.07.2072 that it will remain same as applicable to the earlier appointees when Corporation came into existence. No subsequent provision or regulations could change the conditions of service, which also include pension. Petitioners cannot be put in adverse situation on basis of any subsequent regulations on the subject.

25. Learned Senior Advocate by referring Government Order dated 29.05.1972 submitted that a post earlier known as Sahayak Pradhan Prabandhak was renamed as Assistant Regional Manager after Corporation came into existence. Therefore, the posts on which petitioners were appointed were earlier existed and service provisions applicable to said posts are squarely applicable to petitioners also.

26. Learned Senior Advocate by repeatedly referring Government Order dated 21.07.1972 has mentioned that it was issued under Section 34(1) of Act, 1950 after consultation with Corporation and on behalf of Governor, therefore, it shall be binding upon Corporation. In this regard he refers a judgement passed by Supreme Court in the case of **General Manager, Mysore State Road Transport Corporation vs. Devraj Urs and**

another, (1976)2 SCC 862 that since it was already acted upon, therefore, the subsequent Regulations, 1998 would have no bearing on it.

27. Learned Senior Advocate by referring another judgment passed by Supreme Court in **State of Madhya Pradesh and others vs. Shardul Singh, (1970)1 SCC 108** submitted that conditions of service would also include pension. By referring letter dated 23.10.2008 and 26.10.2017 he submitted that seniority list shows that post of Assistant Regional Manager/ Assistant General Manager was within the purview of U.P. Public Service Commission.

28. Some of the arguments of learned Senior Advocate raised during arguments and mentioned in written submission, are reproduced hereinafter:

“6. The officers who were appointed on the newly created posts of Assistant Regional Manager in the year 1978, have been granted pension by the Corporation. The pleadings in that respect made in paragraph 20 & 61 of writ petition have not been denied in paragraph 20 & 47 of counter affidavit and the Pension Payment Orders of some such officers appointed on newly created posts of Assistant Regional Manager and filed as Annexure No. SA-2 to the supplementary affidavit dated 18.02.2020 (necessary pleadings in paragraph no. 6 of supplementary affidavit) have not been denied in paragraph no. 36 of the supplementary counter affidavit.

7. The petitioners were appointed prior to framing of the Service Regulations 1998, and hence are entitled to pension and other post retirement benefits as payable to the officers of erstwhile U.P. Government Roadways, in accordance with the Government Order dated 21.07.1972. The date of appointment, etc., of the petitioners have been mentioned in para no. 17 of the writ petition which has not been denied in para no. 17 of the counter affidavit.

8. Even the appointment order of the petitioners provided that their services shall be governed by the Service Regulations to be framed under the Road Transport Corporation Act, 1950, and till such regulations are finally brought into effect, their services shall be governed by the Service Rules of the State of U.P. as applicable to the Government Servants as per G.O. dated 21.07.1972 (kindly refer to Annexure No.1 of the writ petition.

9. The right to pension accrues on the date of commencement of recruitment /of appointment. Hence rejection of the claim for pension to the petitioners by the Corporation amounts to resiling from the

condition of service/promise made while giving appointment to the petitioners, and is impermissible under law.

(i) Writ (S/S) No. 1170 of 2010, Ashutosh Joshi vs State of Uttarakhand.

(ii) Writ (S/S) No.944 of 2010, Balwant Singh & Others State of Uttarakhand. (para 9) upheld in Special Appeal NO.330 of 2013 vide judgment dated 26.06.2014.

(iii) 2012 (1) ADJ 165, Raj Kumar Pundir us State of U.P, (paras 3, 7).

(iv) 2023 (11) ADJ 524, Nrupama Malviya vs State of U.P, (paras 20, 21, 22)."

"11. In accordance with the Government Order dated 21.07.1972, the officers of the erstwhile U.P. Government Roadways working on pensionable posts (Assistant General Manager re-designated as Assistant Regional Manager) and the petitioners / officers appointed as Assistant Regional Manager between 01.06.1972 till the date of framing of Service Regulations i.e. 10.09.1998, formed one homogenous class vis-à-vis pension. The impugned orders/resolutions therefore, are discriminatory and violative of Article 14, as it creates a distinct class out of the same homogenous class."

29. Learned Senior Advocate also challenged the resolution dated 17.01.2019 that it was arbitrary, perverse and unreasonable. Financial result of Corporation ought to have been considered on basis of whole financial year and it was profitable. Learned Senior Advocate also challenged the resolution dated 06.04.2023 that it was contrary to the purport of Government Order dated 21.07.1972, which has specifically provided that till framing of Officers' Service Regulations, the conditions of service applicable to the Government servants in erstwhile U.P. Government Roadways will continue to apply to such Officers. So far as resolution dated 18.10.2023 is concerned, learned Senior Advocate submitted that it was also incorrect and perverse.

30. Learned Senior Advocate further submitted that in all only 128 officers of Corporation are now left, who would be entitled to pension as per Government Order dated 21.07.1972 and 12.06.2009 and till March, 2019, 27 Officers out of total 128, have retired. The remaining 111 Officers would retire uptill 2032-33. As such, financial liability for

payment of pension to them is not too much as contended by Respondent-Corporation.

31. Learned Senior Advocate by referring the judgment passed by Supreme Court in the case of **State of Rajasthan and others vs. Mahendra Nath Sharma, (2015)9 SCC 540** submitted that it is a settled law that pension is not a bounty and an employee cannot be deprived of pension in violation of service condition providing for the same.

32. By referring various communications between State and Corporation learned Senior Advocate has submitted that despite there were specific observations and directions of State to consider claim of petitioners for pension being appointed between Government Order dated 21.07.1972 and 03.10.1998 when Regulations, 1998 came into force but said observations were ignored by respondents.

Submission of behalf of Respondent-Corporation

33. Per contra, Sri H.N. Singh, learned Senior Advocate and Sri S.K. Mishra, learned counsel for Respondent-Corporation, has submitted that pension can be granted only on basis of relevant provisions, however, in the present case petitioners have not been able to show any Rules, Regulations or Act which could provide pension to them. Learned Senior Advocate has placed heavy reliance on **U.P. Roadways Retired Officials and Officers Association (supra)** wherein history of Corporation was considered and while considering the issue of pension so far as employees of Corporation is concerned in relation to Road Transport Corporation Employees (Other Than Officers) Service Regulations, 1981 that pension could be granted only when there are specific provisions for the same. He has referred few paragraphs of aforesaid judgment with regard to law of pension and the same are reproduced hereinafter:

29. In order to examine the appellants' claim for pension it is necessary to dwell on the pre-requisites provided in the GO dated 28.10.1960. To be covered in the GO for receiving pension it is necessary for the appellants to plead and establish firstly, that they were holding permanent posts in the Roadways, and they fall in the three categories of employees referred to in para (1) of the GO. It is not the case of the

appellants that they were made permanent by any express order issued by the Roadways management, nor they claim to be working in any of the three posts referred to in para (1) of the GO. Since para (2) of the GO clearly provides that the rest of the permanent non-gazetted employees both in the traffic and engineering sections of the organization, would be treated as non-pensionable and similarly, all temporary employees will also be non-pensionable, the appellants are not entitled to pension as per GO dated 28.10.1960. Secondly, the appellants are not covered under Article 350 as amended on 20.04.1997 of the Regulations to hold the pensionable posts inasmuch as despite amendment in the first part of Article 350 of the Regulations, Note 3 thereof has not suffered amendment which provides that service in non-gazetted posts in Government Technical and Industrial Institutions in Uttar Pradesh does not qualify in the case of persons appointed to such posts on or after 15.11.1938. Since the Roadways is considered to be Technical and Industrial Institution, the appellants are covered under Note 3 of Article 350, and they are not entitled for pension.

30. The High Court, under the impugned judgment, has observed that the appellants having received retiral benefits including the benefit under the Employees Provident Fund Scheme, cannot be permitted to turn round and contend that they should also be given pension. We have also considered this aspect of the matter and we approve the observations of the High Court on the principle that a party to the litigation cannot be permitted to approbate and reprobate. See National Council of Educational Research and Training vs. Shyam Babu Maheshwari & Ors., (2011)6 SCC 412 Krishna Kumar vs. Union of India, (1990)4 SCC 207 and Union of India vs. Kailas, (1998)9 SCC 721.

31. Similarly, in the matter of V.K. Ramamurthy vs. Union of India & Anr., (1996)10 SCC 73 this Court considered the claim for pension of those who opted for pension after a long gap of retirement and held in para 4 that the contributory provident fund retirees form a different class from those who had opted for pension scheme and as such they are not entitled to claim as of right to switch over from Provident Fund Scheme to Pension Scheme. Similar is the proposition in the matter of All India Reserve Bank Retired Officers Association & Ors. Vs. Union of India & Anr., (1992) Supp(1) SCC 664.”

“35. The common thread in the above referred judgments of this Court is that pension is a right and not a bounty. It is a constitutional right for which an employee is entitled on his superannuation. However, pension can be claimed only when it is permissible under the relevant rules or a scheme. If an employee is covered under the Provident Fund Scheme and is not holding a pensionable post, he cannot claim pension, nor the writ court can issue mandamus directing the employer to provide pension to an employee who is not covered under the rules.”

“49. We have already discussed the legal effect of the GOs dated 07.06.1972 and 05.07.1972 read along with Clause (4) of Regulation 39 of the Regulations, 1981. To reiterate, only those employees of the State Government working in the Roadways who have opted for services of the Corporation shall be entitled for pension and other retirement benefits in terms of GO dated 05.07.1972. However, other employees of the Corporation shall not be entitled to pension, but they shall be entitled to the retirement benefits mentioned in sub-Regulations (1) and (2) of Regulation 39. Thus, it is amply clear that only State Government employees absorbed in the Corporation shall be entitled to pension, “phrase that their service conditions shall not be inferior to the conditions as were available under the Government” would be applicable to the State Government employees for the purposes of according benefit of pension. The employees of Roadways who were not holding any pensionable post prior to their deputation or absorption in the Corporation, are not entitled to pension, as their service conditions in the erstwhile Roadways did not provide that they are entitled to pension. Thus, they have not been put to any inferior service conditions on their joining the services in the Corporation. In our considered opinion, the Division Bench of the High Court was not correct in holding that the members of the RKSP are entitled to pension even if they have been promoted after the cutoff date of 27.08.1982.”

34. Learned Senior Advocate for Respondent-Corporation has vehemently referred the provisions of Regulations, 1998 that it was made in supersession of all existing regulations and orders on the subject. The said declaration is reproduced hereinafter:-

“In exercise of the powers conferred by clause (c) of sub-section (2) of Section 45 of The Road Transport Corporation Act, 1950 (Act No. 64 of 1950) and in supersession of all existing regulations and orders, on the subject, the Uttar Pradesh State Road Transport Corporation with the previous sanction of the State Government makes the following regulations regulating the conditions of the service of the officers appointed to the Uttar Pradesh State Road Transport Corporation Officers Service.”

35. Learned Senior Advocate also referred the contents of Regulation 2 (Application); Regulation 17 (Superannuation / Retirement Benefits); and, Regulation 25 (Effect of Enforcement of these regulations), which are already referred in earlier paragraph of this judgment. By referring contents of Regulation 2, learned counsels submitted that Regulations, 1998 shall apply to the Officers, who stood absorbed or have opted for service under the Corporation and to the Officers appointed by the

Corporation on or after first day of June, 1972 whether, in a substantive capacity; or in an officiating capacity against a regular vacancy; or on ad hoc basis; or in any other capacity whatsoever.

36. Learned Senior Advocate further submitted that petitioners have claimed that they were appointed against substantive capacity after 1st June, 1972, therefore, these Regulations shall be applicable in entirety to petitioners also irrespective of earlier orders on the subject, i.e., Government Order dated 21.07.1972 since these regulations were made in supersession of all existing regulations and orders, therefore, services of petitioners would govern after 03.10.1998 when Regulations, 1998 came into force as per its provision. He submitted that Regulation 17 is on superannuation / retirement benefits and the Board has not taken any decision that petitioners were entitled for pension.

37. Sri S.K. Mishra, learned counsel added that after Regulations, 1998 came into force except of the posts specifically declared pensionable, no other posts have option of pension. Learned Senior Advocate has also vehemently referred the effect of enforcement of these regulations and by referring Regulation 25 submitted that petitioners must have given undertaking within a month on the date of commencement that provisions of Regulations, 1998 are accepted to them as well as that no provision of Regulations, 1998 is under challenge.

38. Learned counsel has referred the history behind creation of 135 posts against which petitioners were appointed that it were newly created posts and only on basis of nomenclature petitioners could not equate the said posts with earlier posts which are pensionable. By referring the communications made by State he submitted that contents of said letters show that there was no direction that petitioners are entitled for pension and they have left to the Board to consider their claim for pension. Any reference in said letters was not binding upon the Board of Corporation. Even in earlier round of litigation liberty was granted to the Board and

the State to consider the claim of petitioners, therefore, no benefit be granted to petitioners of said letters.

39. Learned counsel also referred the appointment letters of petitioners that they were initially appointed on temporary posts of Corporation and they never challenged any service conditions or approached this Court or respondents soon after Regulations, 1998 came into force.

40. Learned counsel by repeatedly referring the contents of Government Order dated 21.07.1972 submitted that it was only with regard to “selection process” and not “service conditions” such as pension.

Rejoinder Submission on behalf of Petitioners

41. In rejoinder, learned Senior Advocate appearing for petitioners has submitted that reliance on **U.P. Roadways Retired Officials and Officers Association (supra)** is completely misplaced and untenable as the ratio of aforesaid judgment is not applicable to the facts of present case. Before Supreme Court neither the question of effect of Government Order dated 21.07.1972 nor Regulations, 1998 were raised or considered. Said judgment was limited to the claim of pension of employees of Group ‘C’ and ‘D’ of Corporation and Government Orders issued in that regard. Learned Senior Advocate has referred the judgments passed by Single Bench and Division Bench of this Court which led to Supreme Court.

42. With regard to argument on delay, learned Senior Advocate for petitioners has referred para 17 of writ petition, that it was not denied in para 18 of counter affidavit. For reference para 17 of writ petition and para 18 of counter affidavit are reproduced hereinafter:

“17. That similar appointment orders had been issued in favour of all other petitioners. The details of the appointment and other service details of all the petitioners are mentioned in the chart given below :-

<i>Sl. No.</i>	<i>Name</i>	<i>Date of Appointment as ARM</i>	<i>Date of Promotion & Post</i>	<i>Date of Retirement</i>
<i>1.</i>	<i>Sandeep Raizada</i>	<i>01.07.1990</i>	<i>RM:02.11.12</i>	<i>21.09.2017</i>

				(Vol. Retired)
2.	Aqeel Akhtar Farooqi	19.12.1998	RM:02.11.12	30.04.2016
3.	Flavian Remy Francis	19.12.1986		28.02.2018
4.	Anil Kumar	16.01.1987		31.05.2018
5.	Lalit Rajvanshi	31.01.1987		30.06.2018
6.	Ramesh Chander Sukhija	19.06.1987		31.12.2017
7.	Karri Satyanarayana Murty	27.09.1986		31.08.2018
8.	Chandra Prakash Tiwari	10.10.1986		31.10.2014
9.	Ajay Kumar Srivastava	21.08.1988	SM:14.09.10	30.08.2013 (Vol. Retired)
10.	Junaid Ahmad Ansari	29.04.1988		31.05.2018
11.	Alok Kumar Saxena	26.09.1986	RM:26.02.05 GM:19.06.14	30.09.2018
12.	Asit Kumar Banerjea	29.07.1990		30.11.2018
13.	Harmeet Singh Gaba	25.09.1986	RM:10.06.04 GM:19.06.14	31.01.2019
14.	Sanjiv Chandra Sinha	19.12.1986		30.06.2019
15.	Harish Chandra	26.09.1986		31.12.2019
16.	Saad Saeed	25.09.1986	RM:14.12.04 GM:19.06.14	31.12.2019
17.	Rajesh Verma	24.10.1986	RM:06.08.04 GM:19.06.14	31.05.2020
18.	Atul Bharti	25.09.1986	RM:04.02.06 GM:19.06.14	31.07.2020
19.	Pranay Ranjan Belwariar	30.12.1986	RM:14.08.07 GM:16.06.16	31.12.2020
20.	Jaideep Verma	10.10.1986	SM:14.08.07 GM:26.09.15	31.08.2021
21.	Manoj Ranjan	10.10.1986	SM:14.12.06 GM:25.05.12	31.10.2021
22.	Ataur Rahman	10.10.1986	SM:14.08.07 GM:18.04.18	30.04.2022
23.	Vivek Mathur	10.10.1986	SM:14.08.07 GM:09.06.16	31.01.2023
24.	Sanjay Shukla	10.10.1986	SM:14.08.07 GM:18.04.18	31.01.2023
25.	Vidyanshoo Krishan	25.09.1986		28.02.2023
26.	Shachindra Pratap Singh	01.07.1990	SM:18.06.12	31.12.2023

27.	Sanjeev Kant	01.07.1990		30.11.2026
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ARM = Assistant Regional Manager, RM = Regional Manager,

SM = Service Manager, GM = General Manager.”

“18. That in reply to paragraph no. 17 of the Writ Petition, it is stated that the petitioners were appointed in year 1986 or thereafter i.e. subsequent to incorporation of the respondent corporation on the posts created for the first time in the respondent corporation, and the all appointments were subject to statutory rule to be framed in exercise of power conferred U/s of the Road Transport Corporation Act-1950.”

43. Following are some submissions mentioned in additional written submissions by learned counsel for respondents:

“i. The posts in the U.P. Government Roadways stood transferred to the U.P. State Road Transport Corporation on creation of the Corporation w.e.f. 01.06.1972 (and the employees on such posts were treated to be on deputation to the Corporation). Hence, there was no question of creation of posts in the Government Roadways after 01.06.1972, which ceased to exist.

ii. Neither the claim of petitioners for pension has been rejected on this ground, nor is there any such pleading/proof in the counter affidavit / supplementary counter affidavit filed by the Corporation.

iii. The U.P. Government Roadways (Abolition of Posts and Absorption of Employees) Rules, 1982 (Annexure No. 4 to the writ petition), were only applicable to the "employees" (defined under Rule 2 (ii)) of the U.P. Government Roadways who were on deputation with the Corporation. While the appointment orders on the post of Assistant Regional Manager issued in the year 1978 (filed as Annexure No.3 to the writ petition) were issued by the respondent Corporation on the newly created posts, and those appointees were neither appointed in the U.P. Government Roadways, nor were on deputation with the Corporation.”

44. He also submitted that argument of learned counsel for respondents that Government Order dated 21.07.1972 only relates to the selection process and not pension, is incorrect since this reason has not been assigned while rejecting the petitioners claim for pension in impugned resolutions as well as aforesaid Government Order specifically refers to “service conditions” which include pension.

45. I have heard learned Advocates for parties, perused the documents and pleadings available on record.

Discussion and Conclusion

46. On basis of above referred pleadings and rival submissions, the issue before this Court for consideration is:

“Whether the petitioners, who were appointed on the post of Assistant Regional Manager between 1986 and 1990 on newly created posts, are entitled for Pension on basis of a Government Order dated 21.07.1972 issued under Section 34(1) of Road Transport Corporation Act, 1950 on a subject in regard to selection procedure of posts under Road Transport Corporation as well as communications made by State Government to UPSRTC irrespective of provisions of the Uttar Pradesh State Road Transport Corporation Officers Service (General) Regulations, 1998 made in supersession of all exiting regulations and orders on the subject by the UPSRTC with the previous sanction of the State Government in exercise of the powers conferred by Clause (c) of sub section (2) of Section 45 of the Road Transport Corporation Act 1950?”

47. First of all the Court takes note of brief history mention in earlier part of this judgment. The Road Transport Corporation in State of U.P. was constituted w.e.f. 01.06.1972 and thereafter by a Government Order dated 05.07.1972 services of all Officers as well as Employees working in U.P. Roadways were merged with State Road Transport Corporation and their services were considered in Corporation on deputation and it was left open that whenever the Corporation would make rules regarding service conditions of said officers and employees, their service conditions under Corporation would not be contemptuous than those conditions which were available to them under U.P. State Roadways and their service period, seniority under Corporation, promotion, fixation of pay, right concerning leave and financial benefit, would be considered in the way only as they would have remained in Government service. The word ‘pension’ was missing in said Government Order.

48. Subsequently by way of another Government Order dated 21.07.1972 directions were issued by State Government under Section 34(1) of Act, 1950. Said Government Order was on the subject, “राज्य सड़क परिवहन निगम में पदों के चयन सम्बन्धी प्रक्रिया” . By way of said Government order, it was directed that those posts which were within the purview of U.P. Public Service Commission and till U.P. Road Transport Corporation framed its rule, the service conditions of said posts, so far as appointment etc., shall remain same, i.e., as existed in U.P. Government Roadways.

49. The words “अन्य सेवा शर्त”, i.e., “other service conditions” would include ‘pension’ or not is an issue for determination before this Court.

50. At this stage, it would be relevant to refer the judgment passed by Supreme Court in **U.P. Roadways Retired Officials and Officers Association (supra)** wherein it was reiterated that pension is a right and not a bounty. However, further a caveat was put that pension can be claimed only when it is permissible under the Rules or Schemes and per contra if there is no rule to support the claim of pension, the Writ Court cannot issue a mandamus directing an employer to provide pension to an employee, who is not covered under rules.

51. In aforesaid background the Court takes note of nature of appointment of petitioners, i.e., admittedly on basis of a recommendation of Pallavan Transport Consultancy Services, the Corporation has created 135 posts of Assistant Regional Manager without any reference that said posts were the same which exist before Corporation came into existence under different nomenclature, i.e., Assistant Chief Manager as well as it was also not referred, whether the service conditions of said post would ipso facto applicable to said newly created posts and, therefore, an ambiguity remains. Petitioners have never tried to get the ambiguity cleared, though they remained in service for many years.

52. The Court also takes note that conditions of appointment of petitioners were that their services will be under the Rules or

Regulations to be framed under Act, 1950. In appointment letters there was a reference that till regulations are not framed, their services will be governed by the rules applicable to U.P. Government Employees. Even at that stage, there is no reference of 'pension' since specific service rule was not mentioned in the conditions though it is absolutely clear that if subsequently the Corporation frames rules or regulations, the services of petitioners would be governed by said rules or regulations only.

53. The Corporation at first instance framed Rules, 1981 for employees and its Rule 39 relates to "pension and other retirement benefits" for employees of Corporation that they will not be entitled to pension except who was employee of the State Government in erstwhile U.P. Government Roadways and has opted the service of Corporation since their pension was protected by Government Order dated 05.07.1972. Here it is reiterated that petitioners/ officers entered in the service of Corporation in the year 1986 onwards.

54. In aforesaid circumstances, the Court also takes note that in the year 1998 UPSRTC framed Regulations, 1998 applicable to Officers of Corporation, i.e., applicable to petitioners also. The introduction of said Regulations specifically provides that it was in supersession of all existing regulations and orders on the subject matter and it was framed in exercise of powers conferred by clause (c) of sub-section (2) of Section 45 of Act, 1950, which grant power to the Corporation to make regulations for the condition of appointment and service.

55. The declaration made in very beginning of Regulations, 1998 provides that it was in supersession of all Government Orders on subject, therefore, it was in supersession of the Government Order dated 21.07.1972 also, therefore, benefit of it, if any, to service conditions of petitioners would come to an end when Regulations, 1998 came into existence. After enforcement of Regulations, 1998 the services of petitioners would govern by its regulations only and, therefore, in case said regulations provides provision of pension to services of petitioners, it would be granted, otherwise no pension can be granted.

56. In above background, the Court also takes note that Regulation 2 of Regulations, 1998 provides that it would be applicable to officers appointed by Corporation on and after 01st June, 1972, therefore, without any dispute and ambiguity, these regulations are applicable to the service conditions of the petitioners in its entirety. Here the Court also takes note that none of the provisions of Regulations, 1998 were challenged by petitioners either in first round or in present round of litigation.

57. Regulation 17 of Regulations, 1998 provides that the Board may decide as to type of provident fund to be established for welfare of officers. However, neither petitioners nor respondents have brought on record that in pursuance of said Regulation the Board has taken a decision that petitioners who were appointed before said Regulation came into force would be entitled for pension, rather petitioners who have retired, have taken benefits of Contributory Fund Scheme, i.e., other than pension scheme. Therefore, the Court is of the opinion that any specific scheme which could provide pension to petitioners is not in existence or framed in pursuance of Regulation 17 of Regulations, 1998.

58. The Court also takes note of Regulation 25 of Regulations, 1998, i.e., effect of enforcement of said Regulations. It provides that these Regulations shall apply to all Officers of Corporation who were in service of Corporation on the date of commencement of said Regulations and those who joined said service after such commencement. Since petitioners were admittedly in service of Corporation on the date of commencement of Regulations, 1998, therefore, also these Regulations shall apply to them. Clause (2) of Regulation 25 is also very relevant that Officers who were in service of Corporation when Regulations commenced, were under duty to give an undertaking within a month from the date of commencement of Regulations, 1998 that they have read and understood the regulations and accept the same. Neither petitioners nor respondents have come up with a case that petitioners have not given such undertaking since said clause further provides that in default of such undertaking, the Appointing Authority may consider

termination of their employment. Therefore, petitioners are bound by provisions of Regulations, 1998.

59. On basis of above discussion, the Court is of the firm opinion that there is no specific provision subsequent to commencement of Regulations, 1998 that petitioners were entitled for pension.

60. The Court also carefully perused the resolutions adopted by Board of Directors of Respondent-Corporation. Firstly the resolution adopted in 220th meeting on 25.01.2019 which is referred in para 19 of this judgment that prayer of petitioners for grant of pension was rejected on ground of financial strength of Respondent-Corporation that it was in loss. No legal provision or applicable regulations, was considered, discussed or taken note of while taking said decision.

61. Subsequently, the Board of Directors took a resolution dated 06.04.2023 wherein the nature of creation of 135 posts against whom petitioners were appointed as well as purport of Government Order dated 21.07.1972 as well as retrospective effect of Regulations, 1998 were taken note of including the conditions of appointment that appointments will be governed by any subsequent regulations framed and enforced.

62. The Board of Directors further amended said decision by a subsequent resolution dated 18.10.2023 wherein similar decision was taken that petitioners were not entitled for pension. The Court takes note that decision took by Board of Directors are not happily worded and creates some ambiguity. Though they have referred Regulation 25 read with Regulation 17 but it does not clearly stated that these regulations are of Regulations, 1998 and referred Rules, 1982, which probably have not much bearing on the claim of petitioners. However, one issue is very clear that service conditions of petitioners have to be dealt with only in terms of Regulations, 1998 which were enforced in supersession of all earlier orders. In this regard the Court takes note of amended agenda dated 27.06.2024 but here also the ambiguity remains same, except paras 6 and 7 of it, which is reproduced hereinafter:

" 6. दिनांक 18.10.2023 को निदेशक मण्डल के समक्ष प्रस्तुत एजेण्डा एवं पारित संकल्प के अनुसार परिवहन निगम द्वारा दिनांक 28.04.1982 के बाद निगम द्वारा सृजित पदों के विरुद्ध नियुक्तियां प्रारम्भ की गयी एवं नियुक्ति पत्र में लगायी गयी शर्तों के साथ की गयी कि उनकी यह नियुक्ति, विनियमावली, जो निगम के द्वारा बनायी जायेगी, उसके आधीन होगी और उन्हें नियमावली मान्य होगी।

7. उपरोक्त के सम्बन्ध में स्पष्ट करना है कि निगम द्वारा अपने गठन दि० 01.06.1972 के उपरान्त ही, निगम द्वारा सृजित पदों के विरुद्ध नियुक्तियां प्रारम्भ कर दी गयी थी तथा नियुक्ति पत्र में इस शर्त का भी समावेश किया जाना प्रारम्भ कर दिया गया था कि यह नियुक्तियां निगम द्वारा रोड ट्रान्सपोर्ट कारपोरेशन एक्ट-1950 की धारा 45 के अन्तर्गत बनाये जाने वाले नियम पूर्णतया प्रत्येक पर लागू होंगे।"

63. The outcome of above discussion is that:

(A) Petitioners were appointed against newly created 135 posts of Assistant Regional Manager and their appointment letter has specific condition that their services will be governed by the regulations to be framed under Act, 1950.

(B) Petitioners' claim that benefit granted by Government Order dated 21.07.1972 that service conditions of officers appointed thereafter will always remain the same as granted to U.P. Government Employees, is not a correct proposition since not only there was a reference of above condition in appointment letter but subsequently Regulations, 1998 came into force as well as same nomenclature of post could not be a criteria to determine entitlement for pension.

(C) The introduction of Regulations, 1998 specifically provides that it was in supersession of all earlier Government Orders issued on the subject, therefore, effect, if any, of Government Order dated 21.07.1972 came to end, when Regulations, 1998 were enforced and thereafter in terms of Regulations 17 and 25 the services of petitioners would be governed only by Regulations, 1998, which were accepted by them also.

(D) Petitioners are not able to show that in terms of Regulation 17 of Regulations, 1998 the Respondent-Corporation has framed

any regulation with regard to pension, whereas admittedly all petitioners are beneficiaries of Contributory Fund Scheme and after retirement they have received the due benefits also.

(E) In pursuance of orders passed by this Court, repeated decisions were taken by Board of Directors and, as referred above, they may not be happily worded but it was a consistent decision that services of petitioners shall be governed by Regulations, 1998 once it was framed under the powers conferred by clause (c) of sub-section (2) of Section 45 of Act, 1950.

(F) The nature of communications of State Government has no statutory back up, therefore, they were not binding on the UPSRTC as well as only on ground of nomenclature of post or earlier also some similar post was created, would not negate the facts that 135 posts of Assistant Regional Manager were created in furtherance of recommendation of Pallavan Transport Consultancy Services and that petitioners' appointments were subject to any subsequent service regulations, which were framed in the year 1998, which is now hold the field so far as service conditions of employment of petitioners is concerned.

64. In aforesaid circumstances, discussions, analysis and it's outcome as well as in absence of any specific provision of service regulation to grant pension to petitioners, the relief sought cannot be granted. The issue framed in para 46 of this judgment is answered accordingly.

63. The writ petition is dismissed.

64. No order as to costs.

September 11, 2025
AK

(Saurabh Shyam Shamshery,J.)