



HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition Service Bench No. 452 of 2019

16 July, 2026

Ravinder Kumar

--Petitioner

Versus

Union Of India & another

--Respondents

Presence:-

Mr. Arvind Vashisth, learned Senior Advocate assisted by Mr. Sidhant Tiwari and Mr. Rachit Manglik, learned counsel holding brief of Mr. Vivek Pathak, learned counsel for the petitioner.

Mr. Saurav Adhikari, learned counsel for respondent no.1/Union of India.

Mr. Rajesh Sharma, learned counsel for respondent no.2.

Coram :Hon'ble Manoj Kumar Tiwari, J.

Hon'ble Pankaj Purohit, J.

Hon'ble Manoj Kumar Tiwari, J. (Oral)

Petitioner has challenged rejection of his representation vide order dated 03.09.2019, passed by Director, Aryabhata Research Institute of Observational Sciences (hereinafter referred as "ARIES"). In his representation, petitioner claimed benefit of Old Pension Scheme. His claim was turned down by holding that since petitioner accepted appointment as Manager (Establishment) in Technology Information Forecasting and Assessment Council (hereinafter referred as "TIFAC"), New Delhi, where he served on contract for four years, and while serving in TIFAC, he subscribed to Contributory Provident Fund (CPF) Scheme, therefore, in view of Office Memorandum dated 28.10.2009, issued by Ministry of Personnel, Public Grievances and Pensions, he cannot be permitted to join back the Old Pension Scheme.



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2. Clause 2(c) of the Office Memorandum dated 28.10.2009, which is relied upon for rejecting petitioner's claim, is reproduced below:-

"2(c). the pre-existing arrangement of mobility between State/Central Autonomous Body to Central/State Govt. and between autonomous bodies that were governed by old pension schemes in force upto 31/12/2003 vide No.28/10/84-P&PW dated 7/2/1986 and OM No.28/10/84-Pension unit dated 29/8/1984 stand restored although those under CPF etc. will not be allowed entry into the old pension scheme on appointments from 1/1/2004."

3. It is not in dispute that petitioner initially served in All India Radio and Prasar Bharti, Government of India, from 14.09.1995 to 31.03.2007; after resigning from Prasar Bharti, he joined service of Indian Institute of Management (IIM), Lucknow, on 02.04.2007; after quitting IIM, he joined as Manager (Establishment) in TIFAC, New Delhi, which did not have the Old Pension Scheme. While serving in TIFAC, he subscribed to Contributory Provident Fund (CPF) Scheme. Petitioner served in TIFAC for four years and seven months between 01.06.2010 and 31.12.2014, and thereafter, he was appointed in ARIES as Registrar w.e.f. 01.01.2015, and after serving for a couple of years in ARIES, petitioner accepted appointment in some other organization where he is still serving.

4. Learned Senior Advocate appearing for petitioner submits that while serving in All India Radio, Prasar Bharti, and Indian Institute of Management, petitioner was a Member of GPF Scheme, which is also known as Old Pension Scheme. Therefore, petitioner cannot be denied re-entry into GPF/Old Pension Scheme on the strength of Office Memorandum dated 28.10.2009



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merely because petitioner had gone out of the GPF/Old Pension Scheme for four years and seven months while serving in TIFAC. It is contended that Office Memorandum dated 28.10.2009 prohibits entry of fresh appointees into GPF/Old Pension Scheme, and it does not restrict re-entry of a person who was earlier a Member of GPF/Old Pension Scheme. Thus, it is contended that petitioner continued to be governed by GPF/Old Pension Scheme till he served in IIM, Lucknow, i.e. 31.05.2010, therefore, benefit of Old Pension Scheme cannot be denied to him merely because he accepted employment in TIFAC, which did not have Old Pension Scheme, and petitioner had subscribed to Contributory Provident Fund Scheme while serving in TIFAC.

5. Per contra, Mr. Rajesh Sharma, learned counsel appearing for respondent no.2, submits that petitioner resigned from IIM, Lucknow, on 31.05.2010, even though Central Government had issued Office Memo prohibiting entry into Old Pension Scheme on 28.10.2009, therefore, petitioner cannot now raise a grievance against rejection of his claim for entry into Old Pension Scheme. He submits that petitioner was aware of the consequences of his quitting employment of IIM and accepting employment in TIFAC, which did not have Old Pension Scheme, therefore, he cannot now raise grievance against impugned order whereby his request for entry into Old Pension Scheme was turned down.

6. We find substance in the contention raised on behalf of respondent no.2. Central Government had made it clear in the Office Memorandum dated 28.10.2009 that



henceforth, anyone who is governed by Contributory Provident Fund Scheme will not be allowed entry into Old Pension Scheme. In fact, said restriction was made applicable from 01.01.2004. Learned counsel for respondent no.2 is right in submitting that since petitioner resigned from IIM and accepted employment in TIFAC in 2010 despite stipulation made in Office Memorandum dated 28.10.2009, therefore, it shall be deemed that petitioner willingly relinquished benefit of Old Pension Scheme by joining service in an organization where Old Pension Scheme was not applicable.

7. The doctrine of election would thus come into play, which provides that a person must choose between two alternative benefits. Hon'ble Supreme Court, in the case of **Union of India & Others vs. N. Murugesan & Others**, reported in **(2022) 2 SCC 25** held has under:-

“Approbate and reprobate

26. *These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.*

27. *We would like to quote the following judgments for better appreciation and understanding of the said principle:*

27.1. *Nagubai Ammal v. B. Shama Rao [Nagubai Ammal v. B. Shama Rao, 1956 SCR 451 : AIR 1956 SC 593] : (AIR pp. 601-02, para 23)*

“23. But it is argued by Sri Krishnaswami Ayyangar that as the proceedings in OS. No. 92 of 1938-39 are relied on as



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barring the plea that the decree and sale in OS. No. 100 of 1919-20 are not collusive, not on the ground of *res judicata* or *estoppel* but on the principle that a person cannot both *approve* and *reprobate*. It is immaterial that the present appellants were not parties thereto, and the decision in *Verschures Creameries Ltd. v. Hull & Netherlands Steamship Co. Ltd.* [*Verschures Creameries Ltd. v. Hull & Netherlands Steamship Co. Ltd.*, (1921) 2 KB 608 (CA)] , and in particular, the observations of Scrutton, L.J., at p. 611 were quoted in support of this position. There, the facts were that an agent delivered goods to the customer contrary to the instructions of the principal, who thereafter filed a suit against the purchaser for price of goods and obtained a decree.

Not having obtained satisfaction, the principal next filed a suit against the agent for damages on the ground of negligence and breach of duty. It was held that such an action was barred. The ground of the decision is that when on the same facts, a person has the right to claim one of two reliefs and with full knowledge he elects to claim one and obtains it, it is not open to him thereafter to go back on his election and claim the alternative relief. The principle was thus stated by Bankes, L.J. : (*Verschures Creameries Ltd. case* [*Verschures Creameries Ltd. v. Hull & Netherlands Steamship Co. Ltd.*, (1921) 2 KB 608 (CA)] , KB p. 611)

‘... Having elected to treat the delivery to him as an authorised delivery they cannot treat the same act as a misdelivery. To do so would be to *approve* and *reprobate* the same act.’

The observations of Scrutton, L.J. on which the appellants rely are as follows: (*Verschures Creameries Ltd. case* [*Verschures Creameries Ltd. v. Hull & Netherlands Steamship Co. Ltd.*, (1921) 2 KB 608 (CA)] , KB pp. 611-12)

‘... A plaintiff is not permitted to “*approve* and *reprobate*”. The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election — namely, that no party can accept and reject the same instrument: *Ker v. Wauchope*, (1819) 1 Bligh PC 1 at p. 21; 4 ER 1 at p. 8]; *Douglas-Menzies v. Umphelby*, 1908 AC 224 at p. 232 (PC)] . The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to *approve* and *reprobate* the transaction.’

It is clear from the above observations that the maxim that a person cannot “*approve* and *reprobate*” is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The law is thus stated in *Halsbury's Laws of England*, Vol. XIII, p. 464, para 512:

‘On the principle that a person may not *approve* and *reprobate*, a species of *estoppel* has arisen which seems to be intermediate between *estoppel* by record and *estoppel* in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order (e.g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on



it.’

27.2. *State of Punjab v. Dhanjit Singh Sandhu* [State of Punjab v. Dhanjit Singh Sandhu, (2014) 15 SCC 144] : (SCC pp. 153-54, paras 22-23 & 25-26)

“22. The doctrine of “*approbate and reprobate*” is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (Vide *CIT v. MR. P. Firm Muar* [*CIT v. MR. P. Firm Muar*, AIR 1965 SC 1216] .)

23. It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground. (Vide *Maharashtra SRTC v. Balwant Regular Motor Service* [*Maharashtra SRTC v. Balwant Regular Motor Service*, AIR 1969 SC 329] .) In *R.N. Gosain v. Yashpal Dhir* [*R.N. Gosain v. Yashpal Dhir*, (1992) 4 SCC 683] this Court has observed as under : [*R.N. Gosain case* [*R.N. Gosain v. Yashpal Dhir*, (1992) 4 SCC 683] , SCC pp. 687-88, para 10)

‘10. Law does not permit a person to both *approbate* and *reprobate*. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that ‘a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage’.’

25. The Supreme Court in *Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.* [*Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.*, (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153] , made an observation that a party cannot be permitted to “*blow hot and cold*”, “*fast and loose*” or “*approbate and reprobate*”. Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

26. It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot *approbate* and *reprobate* is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when he has to speak, from asserting a right which he would have otherwise had.”

27.3. *Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.* [*Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.*, (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153] : (SCC pp. 480-81, paras 15-16)

“I. Approbate and reprobate

15. A party cannot be permitted to “*blow hot-blow cold*”, “*fast and loose*” or “*approbate and reprobate*”. Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience. [Vide *Nagubai Ammal v. B. Shama Rao*, 1956 SCR 451: AIR 1956 SC 593, *CIT v. V. MR. P. Firm Muar*, AIR 1965 SC 1216], *Ramesh Chandra Sankla v. Vikram Cement*, (2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706], *Pradeep Oil Corpn. v. MCD* (2011) 5 SCC 270 :

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(2011) 2 SCC (Civ) 712], Cauvery Coffee Traders v. Hornor Resources (International) Co. Ltd., (2011) 10 SCC 420 : (2012) 3 SCC (Civ) 685] and V. Chandrasekaran v. Administrative Officer, (2012) 12 SCC 133 : (2013) 2 SCC (Civ) 136 : (2013) 4 SCC (Cri) 587 : (2013) 3 SCC (L&S) 416].]

16. Thus, it is evident that the doctrine of election is based on the rule of estoppel—the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had.”

8. Learned counsel for the Union of India points out that Old Pension Scheme was done away with pursuant to a policy decision taken by Central Government, and anyone who is appointed to a Central service on or after 01.01.2004 would be governed by New Pension Scheme. He thus submits that since petitioner was appointed by direct recruitment in ARIES in the year 2015, therefore, he was a fresh appointee qua ARIES, and he could have been permitted entry into Old Pension Scheme only if petitioner was a Member of Old Pension Scheme in all organizations where he served. He submits that since petitioner had gone out of Old Pension Scheme for nearly five years, therefore, he could not have been permitted entry into Old Pension Scheme in ARIES, where he was appointed on 01.01.2015.

9. Learned Senior Advocate appearing for the petitioner contended that what is prohibited is entry into Old Pension Scheme. However, re-entry of an employee who was earlier a Member of Old Pension Scheme is not prohibited. He submits that since petitioner was a Member of Old Pension Scheme between 14.09.1995 till 31.05.2010, therefore, petitioner is not hit by the condition mentioned in Clause 2(c) of Office Memorandum dated 28.10.2009.



10. The said contention raised by learned Senior Advocate for petitioner cannot be accepted. Opening sentence of Office Memorandum dated 28.10.2009 reveals that Old Pension Scheme was done away with in respect of Central Government employees, and New Pension Scheme was introduced from 01.01.2004, and provisions contained in Central Civil Services (Pension) Rules, 1972, were amended for making them inapplicable to those appointed on or after 01.01.2004. However, an exception was made by Office Memorandum dated 28.10.2009 in respect of Government employees/ Employees of Autonomous Bodies, and it was provided that if they are governed under Old Non-Contributory Pension Scheme, then they will be permitted entry into Old Pension Scheme upon joining service in some other government organizations.

11. Since petitioner was not governed by Old Non-Contributory Pension Scheme while serving in TIFAC, and ceased to be a member of Old Pension Scheme upon resigning from IIM and accepting employment with TIFAC, he was, in view of the applicable policy, not entitled to become a member of Old Pension Scheme upon joining the service of ARIES.

12. A careful perusal of Clause 1 of Office Memorandum dated 28.10.2009 read with Clause 2(c) thereof makes it clear that any person appointed after 01.01.2004 is not entitled to become a member of Old Pension Scheme. Only exception is a person who has remained a member of Old Pension Scheme throughout, wherever he served. Such a person alone is permitted to be inducted into Old Pension Scheme. Since petitioner had gone out of Old Pension Scheme in 2010, merely by



accepting employment in ARIES in 2015, petitioner was not entitled to become part of Old Pension Scheme, notwithstanding the fact that before 2010, he was member of Old Pension Scheme. Thus, re-entry into Old Pension Scheme is not allowed even to a person who earlier had been member of Old Pension Scheme but had accepted employment for some time in an establishment which did not have Old Pension Scheme. Accordingly, order passed by Director, ARIES, cannot be faulted. There is hardly any scope for interference in the matter. The writ petition is dismissed.

13. We, however, make it clear that this order will not come in the way of petitioner claiming *pro rata* pension or other benefits for the past services rendered by him in other organizations.

(Pankaj Purohit, J.) (Manoj Kumar Tiwari, J.)
16.07.2026

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