

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

WA.No. 650 of 2015 IN WP(C).14524/2014

AGAINST THE JUDGMENT IN WP(C) 14524/2014 DATED 11-02-2015

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APPELLANTS/RESPONDENTS 2 & 3 IN WPC :

1. MANAGING DIRECTOR, KERALA STATE BEVERAGES CORPORATION
(MANUFACTURING & NMARKETING), P.B.NO. 2263
SASTHAKRIPA OFFICE COMPLEX, SASTHAMANGALAM
THIRUVANANTHAPURAM - 685 010.
2. GENERAL MANAGER
KERALA STATE BEVERAGES (MANUFACTURING &
MARKETING) CORPORATION LIMITED
P.B.NO. 2263, SASTHAKRIPA OFFICE COMPLEX
SASTHAMANGALAM, THIRUVANANTHAPURAM - 695 010.

BY ADV. SRI.C.S.AJITH PRAKASH

RESPONDENTS/PETITIONER & 1ST RESPONDENT IN WPC :

1. P.B.GOPI, AGED 57 YEARS
S/O.LATE BHASKARAN P.O., HELPER, WAREHOUSE
BEVERAGES CORPORATION, CHALAKKUDY,
THRISSUR DISTRICT, PIN - 680 130.
2. GOVERNMENT OF KERALA
REPRESENTED BY ITS SECRETARY TAXES DEPARTMENT
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

R1 BY SRI.BABU JOSEPH KURUVATHAZHA
R2 BY SR.GOVERNMENT PLEADER, SRI.P.I. DAVIS.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 08-06-2015,
ALONG WITH WA No.648 OF 2015 AND CONNECTED CASES, THE COURT ON
26-06-2015 DELIVERED THE FOLLOWING:

"CR"

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. Nos. 650, 648, 649, 656, 657, 659, 664, 695, 704,
705, 706, 723, 785, 799, 911, 987, 1015, 1020,
1064, 1066, 1075, 1041, 1114, 1119, 1130
1141 and 1172 OF 2015

Dated this the 26th day of June, 2015

JUDGMENT

Ashok Bhushan, C.J.

These writ appeals have been filed against a common judgment dated 11.02.2015 passed in W.P.(C) No. 14524 of 2014 and connected writ petitions (except W.A. Nos. 785, 799, 911 & 1172 of 2015). All the writ appeals can be grouped into three sets. First set of writ appeals being W.A. No.650 of 2015 and others, filed by the Kerala State Beverages (Manufacturing and Marketing) Corporation Limited. Second set of appeals are the appeals being W.A. No.987 of 2015 and others filed by the State of Kerala against the same judgment dated 11.02.2015. The third group consists of four appeals being W.A. Nos.785, 799, 911 & 1172 of 2015 of which first three petitions have been filed against judgment dated 30.03.2015 and last one is against judgment dated 01.06.2015 passed by a learned Single

WA Nos.650 of 2015 and conn. cases

-:2:-

Judge, by which judgment the learned Single Judge has disposed of the writ petitions following the common judgment dated 11.02.2015 in W.P.(C) No.25634 of 2012. W.A. No.650 of 2015 arising out of W.P.(C) No. 14524 of 2014 is being treated as the leading writ appeal. It shall be sufficient to refer to the pleadings in W.P.(C) No. 14524 of 2014 as well as in W.A. No.650 of 2015 to decide all the appeals. The background facts of the case giving rise to various writ petitions and writ appeals are:

The Kerala State Beverages (Manufacturing and Marketing) Corporation Limited (hereinafter referred to as "Corporation") is a Government company controlled by State of Kerala. Rules have been framed for regulating the service conditions of regular employees of the Corporation, namely the Kerala State Beverages (Manufacturing and Marketing) Corporation Limited Employees Service Rules, 1986 (hereinafter referred to as 'Rules, 1986'). There is one more legislation relevant to be noted is the Kerala Abkari Workers Welfare Fund Board Act, 1989. A Scheme, namely "the Kerala Abkari Workers

Welfare Fund Board Scheme, 1990" (hereinafter referred to as 'Scheme, 1990') has been framed under the 1989 Act.

2. With effect from 1st April, 1996 the State Government banned the sale of arrack in the State. About 12500 abkari workers who were working in different arrack shops lost their jobs. The Government Order dated 20.02.2002 was issued providing that 25% of all daily wage employment vacancies in the Corporation be filled up by the abkari workers. The State Government issued Government Orders, G.O.(Rt) No.212/2001/TD dated 11.04.2001 and G.O.(Rt) No. 313/2001/TD dated 26.03.2003 allotting 185 Foreign Liquor Retail Shops to the Corporation. It was further decided by the Government that Abkari workers of the contractors working in the Foreign Liquor shops shall be absorbed in the Corporation. Before 01.04.1980 about 1,073 workers were registered with the Kerala Abkari Welfare Board (hereinafter referred to as "Board"). Another Government Order was issued on 07.08.2004 by which 25% of the daily wage vacancies in the Corporation were reserved for the dependent sons of the arrack workers who

committed suicide due to loss of employment after the sale of arrack was banned. A settlement dated 28.10.2002 was entered between the Corporation and different Unions of Abkari workers agreeing on various conditions. Several daily wage workers of the Corporation who were covered by EPF Scheme were permitted to register with the Board by Government Order, GO (MS) No.24/2006/TD dated 01.03.2006. A Government Order dated 6.8.2005 was issued by the State Government limiting the age of retirement of abkari workers as well as Corporation workers as 55 years. Another Government order dated 22.03.2008 was issued, by which the retirement age of abkari workers was stated to be 60 years. By further Government Order dated 18.11.2009 Government directed that the Government Order dated 22.03.2008 shall have retrospective effect from 06.08.2005. The abkari workers were provided annual benefit of leave, medical leave and some other benefits.

3. The Corporation sent recommendation to the State Government for increasing the retirement age of workers of the Corporation as 58 years. The recommendation of the

Corporation was not accepted by the State Government. Various writ petitions were filed by the employees of the Corporation which were allowed vide common judgment dated 19.03.2007 reported in **Kavirajan v. K.S.B.C. Ltd.** [2007 (2) KLT 917]. This Court directed that the Corporation employees shall also be allowed to continue till 58 years as decided by the Board of the Corporation. The State filed SLP against the said judgment which was dismissed. The State Government issued Government Order No. 33/2011/TD dated 22.02.2011 fixing the age of retirement of the 'Corporation employees' as 58 years. The State Government has issued Government Order No.36/2011/TD dated 24.02.2011 granting equal scale to three groups of abkari workers who were absorbed by the Corporation further mentioning that their age of retirement is 60 years.

4. W.P.(C) No.30129 of 2012 was filed by five petitioners/employees of the Corporation seeking a direction to Corporation to consider Ext.P5 representation by which they claimed that their age of retirement shall also be increased to 60 years equivalent to the abkari workers. This Court vide its

judgment dated 18.12.2012 directed the Corporation to consider Ext.P5. The Corporation, vide its order dated 05.03.2013, rejected the demand observing that the decision relating to retirement age are matters to be taken at the Government level. Another writ petition, W.P.(C) No.12876 of 2013 (in which writ petition first respondent to appeal No.650 of 2015 was also one of the respondents) was disposed of by this Court on 27.5.2013 directing the Government to take a decision regarding the grievance of the petitioner. The State Government vide its order dated 21.11.2013 rejected the claim of applicant for enhancement of age of retirement to 60 years.

5. Aggrieved by the order, Ext.P13 dated 21.11.2013 of the State Government as well as the order of the Corporation, Ext.P11 dated 05.03.2013, the writ petition No.14524 of 2014 was filed by the first respondent in which writ petition, following prayers were made :-

- “(i) issue a writ of certiorari or any other appropriate writ, order or direction, quashing Ext.P13 order of the 1st respondent and Ext.P11 order of the 2nd respondent;

- (ii) issue a writ of mandamus or any other appropriate writ, order or direction commanding respondents to treat the petitioner alike in the matter of age of retirement and other benefits of service at par with the Abkari workers, as detailed in Ext.P5 order of the Government;
- (iii) issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to permit the petitioner to continue in service, until he attains 60 years;
- (iv) issue any appropriate writ, order or direction declaring that the discrimination practiced by the respondents in the matter of age of retirement and other benefits of service of the petitioner, who is directly appointed by the 2nd respondent as per Ext.P1 order and that of Abkari workers, is violative of Article 14 of the Constitution of India and petitioner is entitled to continue in service, until attaining 60 years, by extending the benefit of GO (Ms.) No.63/08/TD dated 22.03.2008;
- (v) issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to equalize the service benefits of the petitioner and the Abkari workers, including the age of retirement, and to disburse all benefits including arrears to the petitioner, with interest at the treasury rate."

6. Learned Single Judge vide its judgment dated 11.02.2015 allowed the writ petition. Learned Single Judge held

that the abkari workers who were absorbed in the Corporation are being treated at par with other employees of the Corporation for all service conditions. The petitioners performed same duties which are being taken from abkari workers. There can be no differentiation between two category of employees regarding the age of retirement, i.e., those of regular employees of the Corporation and abkari workers, who were absorbed in the Corporation. Learned Single Judge disposed of the writ petition with the following directions :-

"10. In view of the discussions as above, these writ petitions are allowed. The following directions are issued :
It is declared that all regular employees of BEVCO are entitled to continue till the age of 60 years.

- (i) It is further declared that fixation of different age of retirement among employees of BEVCO is violative of Article 14 of the Constitution.
- (ii) All the workers, who are continuing based on the interim order of this Court shall be paid salary and other allowances in accordance with law.
- (iii) If any of the workers, who have filed the writ petitions happen to be retired, pending the writ petition, they shall be reinstated in the service immediately. BEVCO need not pay salary or any

other allowances to those employees during the period of absence. No costs."

The Corporation, aggrieved by the said judgment, has come up with this appeal.

7. We have heard Sri.C.S.Ajith Prakash, learned counsel appearing for the appellant and Sri.K.P.Satheesan, learned Senior Counsel and Sri.Babu Joseph Kuruvathazha and other learned counsel appearing for the petitioners and Sri.P.I.Davis, learned Senior Government Pleader appearing on behalf of the State.

8. Learned counsel for the appellant, challenging the judgment of the learned Single Judge, contended that there was a valid classification between the regular employees of the Corporation and those abkari workers who were absorbed in the Corporation. The abkari workers absorbed in the Corporation were not appointed to any sanctioned post or any cadre. Thus, with regard to the retirement benefits, there is difference between regular employees and those of abkari workers. For regular employees, retirement benefits are given as per 1986

Rules whereas, the abkari workers are entitled to receive retirement benefits in accordance with the 1990 Scheme under the 1989 Act. It is submitted that there are no channel of promotion for abkari workers, whereas Corporation employees are entitled to all promotions as per 1986 Rules. It is further submitted that the mere fact that the abkari workers are given the same duties which the helpers of the Corporation are performing does not furnish any ground for the employees of the Corporation, to claim that their retirement age be increased to 60 years. It is further submitted that under the statutory Scheme abkari workers are entitled to continue 60 years to get the maximum benefit of the Scheme. It is submitted that learned Single Judge did not advert to various important distinction between the service conditions of regular employees of the Corporation and abkari workers and the observation that they are governed by the same service conditions is factually incorrect. It is submitted that there can be different age of retirement with regard to different category of employees in an organisation taking into consideration the historical facts and other relevant

facts. It is submitted that absorption of abkari workers in the Corporation was due to ban of sale of arrack, the Corporation having been permitted/granted licence to run FL shops and to rehabilitate the sons of deceased abkari workers, who committed suicide due to loss of job. It is submitted that age of retirement of regular employees was already increased to 58 years. It is further submitted that various writ petitions were filed which have been decided by common judgment, not only contains the writ petition of helpers rather different categories of employees including Assistant Manager, Assistant Grade I, Typist Grade I, Accountant/Typist Grade II were included and all the petitions have been decided by a common judgment. It is further submitted that several writ petitioners have come to the court after their retirement at the age of 58 years.

9. Learned counsel appearing for the writ petitioners, Dr.K.P.Satheesan and other learned counsel, refuting the contention of learned counsel for the appellant submitted that there cannot be any discrimination in two classes of employees who are similarly situated. He submitted that after the

absorption, the abkari workers became the employees of the Corporation and for the purposes of age of retirement sources of entry in service is irrelevant. He submits that abkari workers as well as employees of Corporation are performing the same duties and hence, classification sought to be suggested by the Corporation is not justified. It is contended that no differentiation can be made with regard to the age of retirement in one class of employees belonging to the Corporation.

10. Sri.P.I.Davis, learned Senior Government Pleader submitted that there was valid classification, in so far as the age of retirement of abkari workers is concerned, as compared to the regular employees of the Corporation. It is submitted that abkari workers do not get various retirement benefits which regular employees are entitled. There are no avenue of promotion to abkari workers who were registered under the Act, 1989 and were covered by the 1990 Scheme who are entitled to work till 60 years of age.

11. Learned counsel for the parties in support of their respective submissions have placed reliance on various

judgments of the Apex Court and this Court which shall be referred to while considering the submissions in detail.

12. The issues to be answered in these writ appeals are:

(I) whether petitioners were entitled to continue up to the age of 60 years which was the age of retirement accepted for abkari workers who were absorbed in the Corporation?

(II) Whether there is any intelligible differentia between the two categories of employees in so far as the age of superannuation is concerned and whether there is a rationale nexus with the object sought to be achieved by the above classification?

13. As noted above, the employees of Corporation are governed by 1986 Rules. According to Rule 48, the age of superannuation of the employees of the Corporation is 55 years which age of superannuation has now been extended up to 58 years by Government Order dated 22.02.2011. In the Corporation three categories of abkari workers were absorbed.

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The details of above three categories of abkari workers have been noticed by the State Government in its Government Order dated 24.02.2011, Ext.P8. It is useful to quote the Government Order which is to the following effect :-

"Taxes Department - Kerala State Beverages Corporation - orders are issued granting equal salary scale and other service benefits to the 3 group of Abkari Workers other than the approved staff of the Kerala State Beverages Corporation.

Taxes (A) Department

G.O.(Manuscript)No.36/2011/T.D. Dated, Thiruvananthapuram : 24.02.2011

Read: Letter No.KSBC/Admn/AA1/2010-11/2840 dated 4.2.2011 of the Director of the Kerala State Beverages Corporation.

ORDER

3 groups of abkari workers are working in the Kerala State Beverages Corporation in addition to its approved staff.

- i. 1072 permanent abkari workers who were working in the private abkari shops at the time when they were taken over by the Kerala State Beverages Corporation and who are members of the Kerala Abkari Workers Welfare Fund Board and were having salary scale.
- ii. 288 Abkari Workers, who obtain job on daily wage basis as per the order of the Government as they

are the sons of those workers who lost their job due to ban of arrack and had committed suicide.

- iii. 876 Abkari Workers who were directly appointed by the Corporation on daily wage basis before 2003 due to the scarcity in the availability of workers at the time when new shops were started by the Kerala State Beverages Corporation.

The job security of the third group mentioned above was come to an end as per the order of the Hon'ble High Court date 31.8.2008 in WP (C)No.25183/ 05. Thereafter, in the order dated 25.11.2010 of the Division Bench of the Hon'ble High Court in WA No.1661/10 it is ordered that they have the right to claim job security as per the Industrial Disputes Act. But, the Beverages Corporation had taken a stand on the basis of the instruction of the Government that they cannot be allowed with the same benefits available to the former group.

3. In these circumstances, in the high level meeting held at the chairmanship of the Hon'ble Labour and Excise Minister on 26.1.2011 it is decided to make change in the earlier stand of the government.

4. The Government has examined these matters in detail. The abkari workers in these three groups are members of the Kerala Abkari Workers Welfare Fund Board. As per para 24 of the Abkari Workers Welfare Fund Scheme, 1990, which was amended in 1999, the workers who are members of the Abkari Workers Welfare Fund Board have the right to continue in the employment till attaining the age of 60 years. The workers of these three work group are not appointed in any of the sanction posts in the Kerala State Beverages Corporation.

5. In the above mentioned circumstances, orders are issued granting the salary scale and other service benefits available to the workers referred to in the first paragraph to the second and third group of abkari workers referred to in the first paragraph other than the approved staff of the Kerala State Beverages Corporation.

(By order of the Governor)

V.P.Joy

Government Secretary (Taxes)"

14. As noted above, one category of abkari workers is belonging to the erstwhile abkari workers who were working in the arrack shops and who became jobless after the ban on the sale of arrack with effect from 01.04.1986. The second category of abkari workers are workers in the FL shops run by the contractors. The State, having decided to allot 185 FL shops, directed the Corporation to take abkari workers in the said shops and they were absorbed accordingly. Third category of 288 abkari workers are those abkari workers who obtained job on daily wage basis, who are the sons of deceased workers, who committed suicide after losing the job. Thus, all the three categories of employees who were directed to be absorbed by the Government, by different Government Orders as noted above,

were due to different compelling reasons. It is further relevant to note that abkari workers were never recruited against any sanctioned post or any specific cadre of the Corporation. They were directed to be absorbed in the Corporation and they were not merged in any of the cadre of Corporation employees. They were allotted duties in the Corporation and permitted to perform duties which were being performed by the Helpers of the Corporation. As noted in the Government Order dated 24.02.2011, abkari workers as per the Abkari Welfare Fund Scheme, 1990 who are members of the Board have the right to continue in employment till attaining the age of 60 years. Thus, the Scheme under which they were registered is the statutory scheme which permitted them to continue till 60 years of age whereas the Corporation employees were governed by 1986 Rules which prescribes the age of superannuation as 55 years and subsequently enhanced to 58 years. It is relevant to note some statutory provision of 1986 Rules and 1990 Scheme which points out difference in several conditions of service of two groups of employees. Relevant Rules are quoted as below. (The

Scheme, 1990 being in Malayalam, we have extracted the English translation thereof.) Rules 43, 75 and 76 of the Rules, 1986 are relevant, which are quoted as below:

"43. Superannuation

All employees shall retire from the service of the Corporation on the last day of the month in which he completes 55 years of age. ***Provided that those employees who attain the age of 55 years during the course of a financial year shall continue in service till the end of that financial year, and that the period of such extended service shall be counted for all applicable service benefits (The above was inserted as per G.O.(Rt)No.624/2009/ TD, dated 13.07.2009-Annexure-H).***

75. Provident Fund

All employees of the Corporation irrespective of their emoluments will contribute to the Provident Fund as under the provisions of the Employees Provident Fund and miscellaneous Provisions Act. The Corporation's contribution will be upto 12% of the wages of the employees as defined under the Act.

76. Gratuity

Subject to the other provisions of the payment of Gratuity Act and Rules made there under, at the time of termination / cessation of

the services of an employee under the Corporation otherwise than as a disciplinary measure, gratuity shall be payable irrespective of the rates of wages / salary at the rate of one month's wages/salary for each completed year of service, subject to the condition that the maximum amount should not exceed **Rs.3.5 lakhs** (The above was inserted as per G.O.(Rt)No.627/2002/TD, dated 07.11.2002 - Annexure - L).

Clauses 2(m), 24, 35(1), 35(2), 35(2a) and 36 of the Scheme, 1990, which read as under:

"2(m) "Superannuation" means the completion of service when the worker attains the age of 60 years or the completion of service by the employer or the officer concerned at the age prescribed by law.

24. Membership:- A worker who has completed a term of continuous service for three months can become a member from the beginning of the scheme, however a worker who has been employed after the implementation of the Scheme is competent to become a member from the date on which he has completed the continuous service of three months.

35. Eligibility for pension:- (1) The fund member, who have completed continuous 10 years in a establishment immediately prior to the commencement of this scheme shall be eligible for pension on attainment of the age of 60 years.

(2) The fund member works for not less than 10 years in an establishment after the commencement of this scheme is

eligible for pension on his attainment of superannuation.

[2a] When an employee is unable to work permanently due to accident, tuberculosis, leprosy, cancer etc or due to other fatal diseases, pension shall be provided to him without taking his service and age into account.

36. Rate of Gratuity:- (1) Gratuity shall be paid to an employee from the gratuity fund at the rate of 50% of average monthly salary for every completed year of service and its such exceeding 6 months subject to a maximum of salary of 20 months.

Explanation: For the purpose of this section

(a) "Average monthly salary" means the average salary earned in the 12 complete calendar months immediately preceeding to the month where in the circumstance to calculate gratuity arose.

(b) The term "12 complete calendar months" found in the explanation (1) is the 12 months where the worker has earned complete monthly salary. If the worker is absent at any period of time just 12 months prior to his retirement from service/death, the salary of 12 complete calendar months shall be reckoned after deducting the months the worker was absent and taking into account the same number of complete salary months just prior to such 12 months."

15. As noted above, a settlement was entered into between the Corporation and different Unions of abkari workers on 28.10.2002. The said settlement has been brought on record

as Annexure A4 to the appeal. It is useful to refer to paragraph III and IX to the settlement, which are to the following effect :-

"Terms of Settlement

- i. The regularization of the Abkari Workers as worked above shall be with continuity of service from 1991 according to the year of registration mentioned in their registration card, but, all the workers now regularized will be placed on probation for a period upto 31.3.2003 as per the conditions of Service Rules of the Corporation.
- ii. The regularized Abkari Worker shall be placed in the regular pay scale of KSBC at the following rates.
 - a) Those workers who have been registered as Abkari Worker as on 31.3.1991 - Rs.3,440/- as basic pay.
 - b) Those workers who have been registered between 1.4.1991 and 31.3.1996 - Rs.3,370/- as basic wages.
 - c) Those workers who have been registered as Abkari Workers after 1.4.1996 - Rs.3,300/- as basic wages.
- iii. (a) The workers after regularization shall be eligible for benefits in addition to the wages such as leave, medical facilities, contribution to Provident Fund and retirement gratuity.
(b) The benefits like Provident Fund and Gratuity etc are now covered under the Kerala Abkari Workers

Welfare Fund Board and hence KSBC shall be making the statutory contribution along with contribution of the worker to the Kerala Abkari Workers Welfare Fund Board.

- iv. The leave facilities to the workers shall be 12 days Casual Leave, 12 days Sick Leave and 18 days Earned Leave as available to the other regular employees of the Corporation and the worker entering on eligible leave shall be eligible for wage for leave days at average rates worked on the average earning of the worker of the preceding month. The other conditions of availing of leave shall be according to the provisions of the Service rules of the Corporation.
- v. The workers shall be guided by the working conditions of the Corporation as stipulated in the Service Rules of the Corporation (except Rule 22) and various guidelines issued from time to time. The Abkari Workers shall continue to have their lien of employment to the shop to which they are attached. The workers shall also be strictly guided by disciplinary norms of the organization.
- vi. The workers shall be paid wages within the time prescribed in the payment of Wages Act.
- vii. The workers shall be eligible for all benefits as applicable to other regularized employees of the Corporation subject to the stipulations in clause 3 (b) above.
- viii. The wages of the worker is as per the pay scales mentioned in clause (ii) above and shall be subject to revision in the cadre from time to time including the

benefit of incremental wage and dearness allowance as is followed in the Corporation.

- ix. The Abkari Workers are regularized in KSBC by virtue of this agreement and since an independent legislation guiding the service benefit of Abkari Workers Welfare Fund Board in which these workers are members, the membership of the Welfare Fund Board shall be continued and contributions thereon will be remitted.
- x. Any dispute arising out of these settlements shall be settled through adjudication by common consent as provided in Section 10 (2) of I.D. Act. The period of this settlement shall be for a period of 3 years from 1.4.2001 and it shall continue to be in force until it is superceded by another settlement or award of any Tribunal or Labour Court."

16. It is relevant to note that though the abkari workers were regularised and absorbed in the Corporation, their regularisation and absorption was not against any sanctioned post which have been clearly noted in the Government Order dated 24.02.2011, in the following manner; "the three groups of abkari workers are not appointed in any of the sanctioned posts in the Kerala State Beverages Corporation". The abkari workers being directed to continue in the members of the Welfare Board

and Scheme 1990 were entitled to the retirement benefits as per the Scheme 1990 and they are not entitled to the retirement benefit scheme applicable to the employees of the Corporation as per Rules 1986. From the facts which have been brought on record following are the differences between regular employees of Corporation and absorbed abkari workers:

Sl. No.	Employees of Corporation	Abkari Workers
1	Recruited as per 1986 Rules against sanctioned post in the Corporation and included in an approved cadre of the Corporation.	Absorbed through different government orders and bilateral settlement consequent to the Government Policy. They are not appointed against any sanctioned post and not included in any approved cadre.
2	Retirement benefits are governed by Service Rules 1986.	Retirement benefits are governed by Abkari Workers Welfare Fund Scheme, 1990.
3	Age of retirement of regular employees as per 1986 Rules is 55 years, now increased to 58 years by Government Order dated 22.2.2011.	According to Clauses 2(m) and 35 of the Scheme 1990 abkari workers are entitled to continue till 60 years to which effect order has already been issued by the Government dated 22.3.2008 with effect from 6.8.2005.
4	Employees of Corporation are entitled for various promotions as per 1986 Rules.	Abkari workers absorbed in the Corporation are not entitled for any promotion since they are not part of any cadre of Corporation.
5	Different cadres in the Corporation are continuing different type of appointment.	Abkari workers are vanishing stream which was gradually diminished by the abkari workers.

6	Employees of the Corporation are entitled for gratuity as per Rule 76 1986 from 1.1.1974 for each completed year of service.	Abkari workers are entitled for gratuity as per Abkari Welfare Fund Scheme, 1990 Rule 36 ie; 50% of the average pay.
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The above are some of the differences which are noticeable from the materials brought on record and submissions made by learned counsel for the parties.

17. Now, we come to the various cases cited by learned counsel for the parties in support of their respective submissions. Learned counsel for the appellant has relied on the Apex Court judgment reported in **Life Insurance Corporation of India and another etc. v. S.S.Srivastava and others** [AIR 1987 SC 1527]. In the above case, after enactment of Life Insurance Corporation Act, 1956, large number of employees working under different private insurers were taken over by the Corporation. The Corporation also made appointment of various employees after 01.09.1956. Staff regulations were framed by the Corporation which also contained provisions of age of superannuation. There were various amendments and changes. In paragraph 10 and 11 of the judgment Regulation 19(1) of the

Staff Regulation, 1960 was noted. The Apex Court noted that in the Regulation, there was a clear classification of all the employees of the Corporation belonging in two groups; (1) transferred employees to LIC and (2) employees appointed by LIC, for the purpose of retirement and superannuation. Paragraphs 10 and 11 are quoted as follows :-

"10. After the matter was duly considered by the Services and the Budget Committee and by the Corporation, regulations were framed under cls. (b) and (bb) of S. 49(5) of the Act prescribing the ages of retirement of the employees of the Corporation belonging to different categories with the previous approval of the Central Government and were incorporated in the (Staff) Regulations, 1960 made by the Corporation which came into effect on July 1, 1960. Regulation 19 of the (Staff) Regulations, 1960 dealt with the subject of superannuation and retirement of the employees of the Corporation. It read thus

"Superannuation and Retirement :

19(1). A transferred employee shall retire on completion of age 60; but the appointing authority may direct such employee to retire on completion of 55 years of age or at any time thereafter, if his efficiency is found to have been impaired.

(2) An employee appointed to the service of the Corporation on or after 1st September, 1956 shall retire on completion of 58 years of age: but the appointing authority may direct such employee to retire on completion of 55 years of age or at any time thereafter, if his efficiency is found to have been impaired"

11. It is seen from the above regulation that the cases of all transferred employees were dealt with by sub-regulation (1) of Regn. 19 and the cases of employees appointed to the service of the Corporation that year after 1st September, 1956 were dealt with by sub-regulation (2) of Regn. 19. All the transferred employees were entitled to remain in service till they completed 60 years of age but the appointing authority was empowered to retire any such transferred employee on completion of 55 years of age or at any time thereafter if his efficiency was found to have been impaired. All employees appointed to the service of the Corporation on or after 1st September, 1956 were required to retire on completion of 58 years of age but the appointing authority was empowered to retire any such employee on completion of 55 years of age or at any time thereafter if his efficiency was found to have been impaired. This regulation was made in supersession of all other earlier regulations. In the case of the transferred employees the regulation was in conformity with the standardisation order passed in respect of Class III and Class IV transferred employees in whose case the age of retirement was fixed at 60 years. The result was that the regulation made a clear and distinct classification of all the employees of the Corporation belonging to all classes into two groups - transferred employees and the employees appointed after 1st September, 1956, for purposes of the age of retirement having regard to the historical reasons. It would appear that an industrial dispute arose between the Class III and Class IV employees who entered the service of the Corporation on or after 1st September, 1956 and the Corporation and one of the points of dispute related to the age of retirement. These employees demanded that their age of

retirement should also be fixed at 60 years as in the case of Class III and Class IV employees belonging to the category of transferred employees. The dispute ultimately ended in a settlement which was incorporated in the Memorandum of Settlement arrived at under S. 2(p) and S. 18(1) of the Industrial Disputes Act, 1947 and Rule 58 of the Industrial (Central) Disputes Rules, 1957 dated 29th January, 1965. The relevant part of the settlement arrived at between the parties to the said industrial dispute as regards the age of retirement of class III and class IV employees who entered the service of the Corporation on or after 1st September, 1956 read as follows :

" 1. Retirement age for new employees :

There will be no distinction between Class III and Class IV 'transferred employees' and Class III and Class IV employees who entered the service of the Corporation on or after 1-9-1956 in regard to retirement age which shall be 60."

The petitioner filed the writ petition in Allahabad High Court claiming that the petitioner who was holding a Class I post of Administrative Officer filed the writ petition claiming that he is also entitled to continue till 60 years. In the writ petition, Regulation 19(2) is challenged stating that it is in violation of Articles 14 and 16 of the Constitution. Petitioner pleaded that there was no justification to prescribe two different age of retirements between Class I and Class II category of employees

who joined the service after 1956 and whose who were transferred to the Corporation. The Apex Court in the said case held that fixation of age of superannuation as 60 years for the transferred employees cannot be held to be unreasonable in view of the history of the case. The Apex Court further noted that transferred employees are belonging to a diminishing cadre.

Following was observed in paragraphs 21 and 22 :-

"21. Having regard to the different conditions of service that were prevailing in the various establishments whose business was taken over by the Corporation it can hardly be disputed that the fixation of age of superannuation is one of the essential parts of the process of transfer and integration to which sub-section (2) of S. 11 of the Act is applicable, The fixation of 60 years as the age of superannuation in the case of transferred employees cannot be considered to be unreasonable in view of the history of this case. The observation made by Pathak, J. in the course of his judgment that "there is no danger of an order made by the Central Government under the second limb of sub-section (2) in respect of transferred employees being struck down on the ground that it violates the equality provisions of Part III of the Constitution because similar action has not been taken in respect of newly recruited employees" is significant. A discrimination made by a State between the

employees who are directly recruited to the service of the State and the employees whose services are taken over by the State on the taking over of the institutions where they were working has been held to be not unconstitutional by this Court in *Ram Lal Wadhwa v. The State of Haryana*, (1973) 1, SCR 608 : (AIR 1972 SC 1982). The facts of that case were these. There were some schools run by municipal boards and district boards in the-then State of Punjab which were taken over by the Punjab Government with effect from October 1, 1957. The teachers then employed in those schools thus became State employees. Those teachers called 'provincialised' teachers were to be given the same grades of pay and other allowances as were given to their counterparts in Government employment. The teachers in Government employment were governed by the Punjab Educational Service Class III School Cadre Rules, 1955. On February 13, 1961, the Punjab Government promulgated under the proviso to Art. 309 of the Constitution, the Punjab Educational Service (Provincialised Cadre) Class III Rules, giving them retrospective effect from October 1, 1957. By these Rules the provincialised teachers were treated as falling under a Cadre separate and distinct from teachers in the State Cadre governed by the 1955 Rules. The 'provincialised' Cadre was to be a diminishing Cadre to become extinct in course of time. There was to be no further recruitment to that cadre and all vacancies arising in that cadre were to be replenished by direct recruitment to the

State Cadre. The transfer of such posts to the State Cadre was to be done by splitting up such vacant posts in the blocks of 7 and 6 by rotation. Consequently, the selection grade of 15% in the State cadre progressively increased in strength which was determined by the total cadre strength while the selection grade in the provincialised cadre progressively decreased. Thus those recruited to the State cadre had a progressively larger chance of getting into the selection grade. In *State of Punjab v. Joginder Singh* (1963) Supp 2 SCR 169 : (AIR 1963 SC 913) this Court upheld the validity of the 1961 Rules repelling challenge under Arts. 14 and 16 of the Constitution. In the view of the majority in that case the two cadres started as independent services, they were never integrated into one service and, therefore, the dissimilarity of the treatment by the Rules was not a denial of equal opportunity. But, the Punjab Government never implemented the Rules at any time. On the reorganisation of the erstwhile Punjab State into Punjab and Haryana on November 1. 1966, the Haryana Government put the 1961 Rules into operation. The petitioners in the above case, i.e., *Ram Lal Wadhwa v. State of Haryana* (supra) appointed in the local bodies Schools before 'provincialisation', challenged the validity of the 1961 Rules. Their complaint was that the Rules created, without any valid justification, two cadres, the State cadre and the provincialised cadre, the former including not only the Government School teachers but also those recruited after October 1, 1957 and posted in the

provincialised schools, that by reason of having two cadres and providing for both a uniform 15 per cent for selection grade posts, coupled with making the provincialised cadre a diminishing one, the result had been that teachers deemed to have been appointed to the State cadre with effect from October 1, 1957 and even those recruited thereafter had been promoted to the selection grade, while those in the provincialised cadre, though senior in service and performed identical duties and had identical scales of pay, remained in the ordinary grade. According to the petitioners in that case these Rules and their implementation contravened Arts. 14 and 16 of the Constitution. The petitioners in that petition contended that the earlier decision of this Court in *State of Punjab v. Joginder Singh* (supra) required reconsideration. In the course of its decision this Court while rejecting the contention of the petitioners observed thus at pp. 635-636 : (of (1973) 1 SCR) : (at pp. 1996-97 of AIR 1972 SC) :

"The principles on which discrimination and breach of Arts. 14 and 16 can be said to result, have been by now so well settled that we do not think it necessary to repeat them here once again. As already seen, ever since 1937 and even before, the two categories of teachers have always remained distinct, governed by different sets of rules, recruited by different authorities and having, otherwise than in the matter of pay scales and qualifications, different conditions of service. This position remained as late as February 13, 1961. On that day whereas the State cadre teachers were governed by 1955-Rules, rules had yet to be framed for the provincialised cadre a diminishing one and bringing about ultimately through that principle one cadre only in the field in a phased manner. If through historical reasons the teachers had remained in two separate categories, the classification of the provincialised teachers into a separate cadre could not be

said to infringe Art. 14, and Art. 16. It was also not incumbent on the Government to frame the 1961-Rules uniformly applicable to both the categories of teachers, firstly, because a rule framing authority need not legislate for all the categories and can select for which category to legislate, (see *Sakhawat Ali v. State of Orissa* (1955) 1 SCR 1004 : (AIR 1955 SC 166), *Madhubhai Amathalal Gandhi v. Union of India* (1961) 1 SCR 191 and *Vivian Joseph Ferreira v. The Municipal Corporation of Greater Bombay* (1972) 1 SCC 70: (AIR 1972 SC 845)) and secondly, because it had already come to a decision of gradually diminishing the provincialised cadre so that ultimately only the State cadre would remain in the service. That was one way of solving the intricate difficulty of inter se seniority. There can be no doubt that if there are two categories of employees, it is within Government's power to recruit in one (and) not recruit in the other. There is no right in a Government employee to compel it to make fresh appointments in the cadre to which he belongs. It cannot also be disputed that Government had the power to make rules with retrospective effect, and therefore, could provide therein that appointments made between October 1, 1957 and February 13, 1961 shall be treated as appointments in the State cadre. That had to be done for the simple reason that the provincialised cadre was already frozen even before October 1, 1957 and Government had decided not to make fresh appointments in that cadre since that cadre was to be a diminishing one."

22. It has to be observed in the case before us also that the transferred employees belong to a diminishing cadre. When the Corporation was established they were about 27,000 in number and we are informed today that there are only about 22% of those employees in service. Already 30 years have elapsed from the date of the establishment of the Corporation. All the transferred employees who have already retired have retired only after completing 60 years. The remaining transferred employees are likely to go out of office within a short period. Thereafter only the employees who are

directly recruited by the Corporation who are about 54,000 in number would continue to remain in its service. The observation made by this Court in Ram Lal Wadhwa v. State of Haryana (AIR 1972 SC 1982) (supra) clearly applies to the case before us also.”

The Apex Court held that classification into two categories for the purpose of fixing the age of superannuation depending upon their dates of entry into service on account of certain historical reason was justified. The judgment of the High Court was set aside. Following was laid down in paragraph 31, 34 and 36 :

“**31.** Classification of employees into two categories for purposes of fixing the age of superannuation depending upon their dates of entry into service when the necessity for doing so arises on account of certain historical reasons is not unknown. This Court had to deal with a case involving a similar situation in Railway Board v. A. Pitchumani (1972) 2 SCR 187: (AIR 1972 SC 508). Several railway companies which were running their own railways in different parts of India were amalgamated with the Indian Railway Administration in 1947. On such amalgamation servants of the railway companies, whose railways were taken over, became the employees of the Indian Railway Administration. On the absorption of the services of the servants of the previous railway companies it became necessary for the

Indian Railway Administration to frame rules with regard to their conditions of service including the determination of the age of retirement of those railway employees. Accordingly, rule 2046 (F.R. 56) of the Indian Railway Fundamental Rules had to be modified. That rule was, therefore, substituted by a new rule on January 11, 1967. The new rule reads as follows :

"2046. (FR.56) (a) Except as otherwise provided in this rule, every railway servant shall retire on the day he attains the age of fifty-eight years.

(b) A ministerial railway servant who entered Government service on or before the 31st March, 1938 and held on that date

(i) a lien or a suspended lien on a permanent post, or

(ii) a permanent post in a provisional substantive capacity under Clause (d) of Rule 2008 and continued to hold the same without interruption until he was confirmed in that post, shall be retained in service till the day he attains the age of sixty years.

Note : For the purpose of this Clause, the expression "Government Service" includes service rendered in ex-company, and ex-State Railways, and in a former provincial Government."

In the above new rule every railway servant, whose case did not fall under clause (b) of that rule was required to retire on the date he attained the age of 58 years. Clause (b), however, provided that every ministerial railway servant who had entered 'the Government service on or before 31st March, 1938 and who satisfied the conditions mentioned either in sub-clause (i) or subclause (ii) thereof was entitled to continue in service till he attained the age of 60 years. As

may be seen from that rule, the classification of the employees was made on the basis of the date of entry into the service of the Government. That clause (b) of the said rule applied also to the employees of ex-companies and ex-State railways which were taken over by the Indian Railway Administration is clear from the note attached to clause (b) of rule 2046 which provided that for the purpose of that clause the expression 'Government Service' included service rendered in ex-company and ex-State railways and in a former provincial Government. On December 12, 1967 the Indian Railway Administration substituted the note attached to clause (b) of rule 2046 by the new note which read thus :

"For the purpose of this clause the expression 'Government Service' includes service rendered in a former provincial Government and in ex-company and ex-State Railways, if the rules of the Company or the State had a provision similar to Clause (b) above."

The effect of the new note was that an employee who satisfied the condition in subsection (i) or sub-clause (ii) of clause (b) was entitled to continue up to 60 years after December 23, 1967 only if the rules of the company in which he was formerly working had a provision similar to clause (b) of rule 2046 which fixed the age of retirement at 60 years. The respondent in that case, that is, A. Pitchumani while he was entitled before December 23, 1967 to continue in service till he attained the age of 60 years as he had joined the service of the Madras and Southern Mahratta Railway Company on August 16, 1927, i.e., prior to March 31, 1938

and satisfied the other conditions mentioned in clause (b) of rule 2046 could not have the benefit of that clause on and after December 23, 1967 since in the Madras and Southern Mahratta Railway Company where he was formerly working there was no rule similar to clause (b) as regards the age of retirement. He was asked to retire, from service on April 14, 1968 on which date he was completing the age of 58 years. The respondent, A. Pitchumani questioned before the High Court of Mysore (Karnataka) the validity of the note substituted by the Order dated December 23, 1967 which took away his right to continue in service till he attained the age of 60 years which he otherwise possessed before the introduction of the said note. The High Court of Mysore struck down a part of the new note only on the ground that it was discriminatory and directed that the respondent, A. Pitchumani should be allowed to continue in the service till he completed the age of 60 years. On appeal, the judgment of the High Court was affirmed by this Court in *Railway Board v. A. Pitchumani* (AIR 1972 SC 508) (supra). This Court did not find fault with the classification that had been made between the persons falling under clause (a) and persons falling under clause (b) on the basis of the date of entry into service since clauses (a) and (b) of rule 2046 had uniform application to all the employees of the Indian Railway Administration who came within the respective clauses. It, however, agreeing with the High Court found fault with the classification of the employees falling under clause (b) into two categories,

namely, those employees belonging to a company where there was a rule similar to clause (b) as regards the age of superannuation and those employees who came from companies where there was no rule similar to clause (b) as regards the age of superannuation. In *Manindra Chandra v. Union of India*, AIR 1973 Cal 385, *Sabyasachi Mukharji, J.*, has upheld the said classification of railway employees into two categories viz. those who joined on or-before 31-3-1938 and those who joined after 31-3-1938 for purposes of fixing the age of superannuation on the basis of same historical facts which are set out in detail in that judgment. Such classification for purposes of fixing the age of superannuation depending upon the date of entry into service is not, therefore, something which is unusual and such classification becomes necessary on account of historical facts and the need for treating the employees in a fair and just way.

Xx xx

34. The decision of this Court in *Workmen of the Bharat Petroleum Corporation Ltd. Bombay v. Bharat Petroleum Corporation Ltd.* (1984) 1 SCR 251 : (AIR 1984 SC 356) no doubt lays down that under the modern conditions there is a general trend in favour of raising the age of retirement in the case of employees in industrial establishments. It may be so. We are not concerned in this case with the question whether the age of retirement of employees who have joined the service of the Corporation after 1st September, 1956 should be raised to 60 years. That is a matter of policy which has got

to be decided by the Corporation and the Central Government. We are only concerned with the question whether the employees appointed after 1st September, 1956 have been subjected to any hostile discrimination while fixing the age of retirement contrary to Art. 14 and Art. 16 of the Constitution. Since the classification of the employees for the purpose of age of retirement into two categories in this case appears to us to be reasonable and not arbitrary and that there is a reasonable nexus between the classification and the object to be attained thereby, it is not possible to hold that Regn. 19(2) is violative of Arts. 14 and 16 of the Constitution.

Xx xx

36.The decision taken by the Corporation and the Central Government as regards the ages of retirement of the different classes of the employees of the Corporation in the instant case is a bona fide one and cannot be characterised as unreasonable. It is not, therefore, liable to be upset by a decision of the Court. On a careful consideration of all the aspects of the case We feel that the High Court erred in striking down regulation 19(2) of the (Staff) Regulations, 1960 as amended in the year 1917, and in directing the Corporation to continue the 1st respondent in its service till he completed the age of 60 years. We, therefore, set aside the judgment of the High Court and dismiss the writ petition filed in the High Court. The appeals are accordingly allowed. There shall, however, be no order as to costs."

18. Another judgment relied on by Sri.P.I.Davis is (1987) 3 SCC 120 **(B.S.Yadav and another v. Chief Manager, Central Bank of India and others)**. In the said case, different age of superannuation was fixed for employees who were inducted prior to bank's nationalisation on 19.07.1969 and those inducted after that date. It was challenged on the ground of violation of Articles 14 and 16. Relevant Rules were extracted in paragraph 11, which is to the following effect :-

“**11.** In accordance with the guidelines issued by the Central Government, the Board determined the Rules for Age of Retirement as follows :-

The age of retirement of an officer in the Bank on or after the appointed date shall be determined as under :

- (1) An officer employee of the Bank recruited/promoted prior to July 19, 1969 shall retire on completion of 60 years of age.
- (2) An officer employee of the Bank recruited prior to July 19, 1969 but promoted as an officer on or after July 19, 1969 shall retire on completion of 60 years of age.
- (3) An officer employee of the Bank recruited whether as an Award Staff or as an officer employee on or after July 19, 1969 shall retire on completion of 58 years of age.”

The Apex Court upheld the classification as valid and laid down in paragraphs 16 and 17 as follows :-

"16. We have given detailed reasons in our judgment in *LIC v. S.S.Srivastava* decided on May 5, 1987 justifying the existence of a rule fixing different ages of retirement to different classes of employees of the Life Insurance Corporation of India in the circumstances existing there. The circumstances prevailing in this case are almost the same. Those reasons are equally applicable to the present case too. In *Govindarajulu v. Management of the Union Bank of India* decided on November 21, 1986 the High Court of Madras has rejected the contentions similar to those which are raised before us. In that case a regulation framed by the Union Bank of India which was similar to the one in this case was upheld. That decision has been approved by us in *LIC v. S.S.Srivastava*. In *Dr Nikhil Bhusan Chandra v. Union of India* similar regulations framed by the United Commercial Bank which was also nationalised under the Act came up for consideration before the High Court of Calcutta. The High Court rejected the theory of discrimination put forward on the basis that fixing 60 years as age of retirement for those who were recruited prior to July 19, 1969 and 58 years of age who joined after that date lacked an intelligible differentia. The Calcutta High Court pointed out that the terms and conditions of the service of the employees of the banks which were taken over under the Act had been protected by the Act and it was not possible to hold that there had been any hostile discrimination against the petitioner in that case. We are of the view that the decisions of the Madras High Court and the Calcutta High Court referred to above, lay

down the correct principle. It is true that if the nationalised banks wanted to reduce the age of retirement of the transferred employees they could have done so. But they have tried to standardise their conditions of service and to bring about some uniformity without giving room for much discontent or dissatisfaction. The question involved in this matter is not one of mere competence. It involves justice and fairness too. Having regard to all aspects of the matter, the nationalised banks have tried to be fair and just insofar as the question of age of retirement is concerned. We cannot say in the circumstances that the Bank's attitude is unreasonable, particularly when the age of retirement of the new entrants is quite consistent with the conditions prevailing in almost all the sectors of public employment.

17. We are of the view that the classification of the employees into two categories, i.e., those falling under Rules 1 and 2 of the Rules for Age of Retirement and those falling under Rule 3 thereof satisfies the tests of a valid classification laid down under Articles 14 and 16 of the Constitution. We do not, therefore, find any ground to declare Rule 3 of the Rules for Age of Retirement, which is impugned in this case, as unconstitutional."

19. Learned counsel for the petitioners have laid much emphasis on the judgment of the Apex Court reported in **State of Uttar Pradesh v. Dayanand Chakrawarty and others** [(2013) 7 SCC 595]. In the above case, Uttar Pradesh Jal Nigam

was constituted by the State Government under the U.P. Water Supply and Sewerage Act, 1975. The employees and engineers of the Local Self Government Engineering Department were transferred and merged into the newly created Nigam. Nigam also made recruitment to various posts. U.P.Jal Nigam Services of Engineers (Public Health Branch) Regulations, 1978 were framed which Regulations were made applicable to the employees transferred and merged and those directly recruited by the Nigam. Relevant facts have been noted in paragraph 10, which quoted below :-

“10. Subsequently, in exercise of powers conferred under sub-section (1) and clause (c) of sub-section (2) of Section 97 of the Act, 1975, and with the previous approval of the State Government, Nigam made the Uttar Pradesh Jal Nigam Services of Engineers (Public Health Branch) Regulations, 1978 (hereinafter referred to as the Regulations, 1978) for regulating the recruitment to the posts and the conditions of service of persons appointed to the Jal Nigam Engineers (Public Health Branch). The said Regulations, 1978 were made equally applicable to the employees transferred and merged from the erstwhile LSGED and the employees directly recruited by the Nigam and it

came into force w.e.f. 27th April, 1978. Regulation 31 relates to pay, allowance, pension, leave and other conditions of service which reads as follows:

“ 31.- Except as provided in these regulations the pay, allowance, pension, leave, imposition of penalties and other conditions of service of the members of the service shall be regulated by rules, regulations or orders applicable generally to the Government Service in connection with the affairs of the state.”

The retirement age of State Government employees was 58 years. By amendment to U.P. Fundamental Rules, 2002 the age of superannuation of the State Government employees was enhanced from 58 to 60 years. However, the said amendment was not made applicable by the Nigam. Large number of employees filed writ petitions in the Allahabad High Court and the matter was ultimately taken to Supreme Court which decided the controversy in case reported in Harwindra Kumar v. Chief Engineer, Karmik [(2005) 13 SCC 300]. The Apex Court held that all employees of the Corporation are entitled to the benefit of 60 years which retirement age has been now fixed by the State Government. The Apex Court, however, observed that it

shall be open for the Corporation to amend the Regulations with the previous approval of the State Government. The directions issued by the Apex Court in **Harwindra Kumar's case** (supra) has been noticed in paragraph 14, which is quoted as follows :-

"14. Against the decision of the State Government dated 22nd January, 2002 and the decision of the Nigam vide Office Memorandum dated 11th July, 2002 a number of writ petitions were preferred by the employees of the Nigam who were being sought to retire on completing the age of 58 years. Some of the employees directly filed writ petitions before this Court challenging the orders issued by the Nigam against them to the effect that they would superannuate upon completion of 58 years. This Court by its judgment in *Harwindra Kumar vs. Chief Engineer, Karmik and others*, 2005 (13) SCC 300 directed the Nigam to continue the petitioners of those cases in service till they attain the age of 60 years and the orders directing their retirement at the age of 58 years were set aside with the following observation:

"9. In the present case, as the Regulations have been framed by the Nigam specifically enumerating in Regulation 31 thereof that the Rules governing the service conditions of government servants shall equally apply to the employees of the Nigam, it was not possible for the Nigam to take an administrative decision acting under Section 15(1) of the Act pursuant to the direction of the State Government in the matter of policy issued under Section 89 of the Act and

directing that the enhanced age of superannuation of 60 years applicable to the government servants shall not apply to the employees of the Nigam. In our view, the only option for the Nigam was to make suitable amendment in Regulation 31 with the previous approval of the State Government providing thereunder the age of superannuation of its employees to be 58 years, in case it intended that 60 years which was the enhanced age of superannuation of the State Government employees should not be made applicable to the employees of the Nigam. It was also not possible for the State Government to give a direction purporting to act under Section 89 of the Act to the effect that the enhanced age of 60 years would not be applicable to the employees of the Nigam treating the same to be a matter of policy nor was it permissible for the Nigam on the basis of such a direction of the State Government in the policy matter of the Nigam to take an administrative decision acting under Section 15(1) of the Act as the same would be inconsistent with Regulation 31 which was framed by the Nigam in the exercise of powers conferred upon it under Section 97(2)(c) of the Act.

10. For the foregoing reasons, we are of the view that so long as Regulation 31 of the Regulations is not amended, 60 years which is the age of superannuation of government servants employed under the State of Uttar Pradesh shall be applicable to the employees of the Nigam. However, it would be open to the Nigam with the previous approval of the State Government to make suitable amendment in Regulation 31 and alter the service conditions of employees

of the Nigam, including their age of superannuation. It is needless to say that if it is so done, the same shall be prospective. 11. For the foregoing reasons, the appeals as well as writ petitions are allowed, orders passed by the High Court dismissing the writ petitions as well as those by the Nigam directing that the appellants of the civil appeals and the petitioners of the writ petitions would superannuate upon completion of the age of 58 years are set aside and it is directed that in case the employees have been allowed to continue up to the age of 60 years by virtue of some interim order, no recovery shall be made from them but in case, however, they have not been allowed to continue after completing the age of 58 years by virtue of erroneous decision taken by the Nigam for no fault of theirs, they would be entitled to payment of salary for the remaining period up to the age of 60 years which must be paid to them within a period of three months from the date of receipt of copy of this order by the Nigam. There shall be no order as to costs.""

The Corporation made U.P.Jal Nigam Employees (Retirement of Attaining Age of Superannuation) Regulations, 2005 in which Regulations 3 and 4 were framed where difference was made in the age of superannuation of the employees who were employed in the Local Self Government and transferred to the Corporation and others as 58 years. Paragraph 16 contains Regulations 3 and

4, which are to the following effect :-

“16. Regulations 3 and 4 reads as follows:

Retirement on attaining age of superannuation:

3. Age of superannuation of every employee who was employed in the Engineering Department of the Local Self Government under Section 37(1) of the Act, and has been transferred to the Corporation and is employed in the Corporation, will be 60 years.

4. The age of superannuation of the employees different from those under Rule 3 above, will be 58 years. But the age of superannuation of the Group 'D' employee who have been employed prior to 5.11.1985, will be 60 years.”

Regulations 3 and 4 were again challenged by filing various writ petitions and writ petitions were allowed by learned Single Judge. Later, it was taken before the Division Bench by the Corporation. The matter was taken to the Apex Court, where the appeal was dismissed by the judgment dated 29.07.2010. A Division Bench of Allahabad High Court, Lucknow Bench declared that the Regulation, 2005 is unconstitutional which created two classes of employees in the Corporation with two retirement ages. The said judgment was challenged in the Apex Court in which the

judgment was rendered reported in Dayanand Chakrawarty and others' case(supra). The Apex Court upheld the judgment of the High Court in so far as it declared the Regulation, 2005 as violative of Articles 14 and 16. However, for upholding the judgment of the Division Bench, Apex Court noted various reasons. Following reasons have been given by the Apex Court in paragraphs 30 to 37, which are to the following effect :-

“30. This Court in Harwindra Kumar (supra) held that so long as Regulation 31 is not amended, 60 years which is the age of superannuation of the government servants shall be applicable to the employees of the Nigam. However, in contravention of finding of this Court without amending Regulation 31, new Regulation 3 and 4 of Regulations, 2005 has been framed by the Nigam prescribing two separate age of superannuation for similarly situated employees.

31. In Prem Chand Somchand Shah v. Union of India 1991 (2) SCC 48 this Court held:

8. As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons

dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question."

32. Since creation of the Nigam, irrespective of source of recruitment, the employees of the Nigam were treated alike for the purpose of superannuation and were allowed to superannuate at the age of 58 years as is evident from Regulation 31.

33. As per decision of this Court in Prem Chand Somchand Shah (supra) even amongst persons similarly situated differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute. The appellants, the Nigam as well as the State of Uttar Pradesh failed to place on record the reasons for differential treatment which distinguishes employees of erstwhile LSGED and those who were appointed directly in the Nigam.

34. Further, as employees appointed from different

source, after their appointment were treated alike for the purpose of superannuation under Regulation 31, subsequently solely on the basis of source of recruitment no discrimination can be made and differential treatment would not be permissible in the matter of condition of service, including age of superannuation, in absence of an intelligible differentia distinguishing them from each other. We therefore hold that the High Court by impugned judgment rightly declared Regulations, 2005 unconstitutional and ultra-vires of Article 14 Article 14 of the Constitution of India.

35. Regulation 31 of the 'Uttar Pradesh Jal Nigam Services of Engineers (Public Health Branch) Regulations, 1978' Special Regulation; it will not be affected by later Regulation 4 of the Uttar Pradesh Jal Nigam (Retirement on attaining age of Superannuation) Regulations, 2005, in absence of express repeal of Special Regulation. By implication it cannot be inferred that the Regulation 31 stands repealed in view of subsequent Regulations, 2005.

36. Even if it is treated that both the General Regulation 4 of Regulations, 2005 and Special Regulation 31 of Regulations, 1978 co-exist, one which is advantageous i.e. Regulation 31 shall be applicable to the members of the same service.

37. The State Government's order dated 29th June, 2009 prescribing a uniform age of superannuation at 58 years for the employees working in the Government Companies and Government Corporations cannot prevail over statutory

Regulation 31 framed by the Nigam under Section 97 (2) (C) of the Act, 1975 with the previous approval of the State Government. Therefore, the employees of the Nigam shall not be guided by the State Government's order dated 29th June, 2009 but will continue in the services up to the age of 60 years, in view of Regulation 31, having not yet amended or repealed.”

The Apex Court noted that employees of Nigam were treated alike for the purpose of superannuation and were allowed to superannuate at the age of 58 years as per Regulation 31. Both the groups of employees form a common cadre after both of them were appointed from different sources. It was held that they have been treated equal for age of superannuation right from beginning. Subsequent discrimination between the age of superannuation, brought by 2005 Regulation, was arbitrary. The said judgment of the Apex Court was thus on its own facts and on special features of that case. The above judgment does not help the appellant since in the present case regular employees of the Corporation and abkari workers were governed by different rules/scheme for the age of superannuation. The age of

superannuation of employees of Corporation is as per Rule 48 of 1986 rules, whereas the abkari workers were entitled to continue up to 60 years as per **Clauses 2(m) and 35** of the Scheme 1990. Further, both the employees in ***Nigam's case (supra)*** were part of the same cadre and were holding the same post either having been transferred from the Local Self Government Department or having been freshly recruited. The above case was thus a case of one cadre and one post, hence the classification was not upheld.

20. The second case relied on was the Apex Court judgment reported in **Union of India v. Atul Shukla others** [(2014) 10 SCC 432]. In the above case there was also classification of officers serving in the Air Force holding the same rank for the purpose of superannuation. In the said case the classification was made on the post of group captain in the Air Force. Arguments were noted by the Apex Court in paragraphs 1 & 7 which are quoted below:

“1.These appeals arise out of separate but similar orders passed by the Armed Forces Tribunal, Principal

Bench, New Delhi, whereby the Tribunal has allowed the petitions filed by the respondents holding them entitled to continue in service upto the age of 57 years in the case of officers serving in the ground duty branch and 54 years in the case of those serving in the flying branch of the Indian Air Force. The solitary question that falls for our consideration, therefore, is whether the respondents who at the relevant point of time held the rank of Group Captain (Time Scale) in the Indian Air Force were entitled to continue in service upto 54 and 57 years depending upon whether they were serving in the flying or ground duty branch of the force.

7. This classification of officers serving in the air force holding the same rank but governed by different standards for purposes of their superannuation was assailed by the respondents who were Group Captain (Time Scale) in petitions filed by them before the Armed Forces Tribunal, Principal Bench, New Delhi. The grievance made by them was that Group Captains in the Air Force constituted one class regardless whether they were promoted to that rank by time scale or on inter se merit. The respondents alleged that they were discharging the same kind of duties as were being performed by Group Captains (Select). They were wearing the same ranks and drawing the same emoluments and other allowances and were regulated by the same conditions of services in all other respect. Classifying officers

who were similarly situate on the basis of the method of appointment to the rank of Group Captain when everything else was the same, was violative of Art.14 and Art.16 of the Constitution argued the aggrieved officers.”

The Apex Court in the said case had occasion to notice various earlier judgments pertaining to validity of classification, paragraphs 16 to 20 reads as follows :-

“16. A long line of decisions of this Court that have explained the meaning of equality guaranteed by Art.14 and Art.16 of the Constitution and laid down tests for determining the constitutional validity of a classification in a given case immediately assume importance. These pronouncements have by now authoritatively settled that Art.14 prohibits class legislation and not reasonable classification. Decisions starting with *State of West Bengal v. Anwar Ali*, AIR 1952 SC 75 down to the very recent pronouncement of this Court in *Dr. Subramanian Swamy v. Director, CBI and Another*, AIR 2014 SC 2140 have extensively examined and elaborately explained that a classification passes the test of Art.14 only if (i) there is an intelligible differentia between those grouped together and others who are kept out of the group; and (ii) There exists a nexus between the differentia and the object of the legislation.

17. Speaking for the Court Das J., in Anwar Ali's case (supra) summed up the essence of what is permissible under Art.14 in the following words:

"54.The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. "

18. The principle was reiterated in Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Others, AIR 1958 SC 538 in the following passage:

"It is now well established that while Art.14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled namely (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The

classification may be founded on different bases, namely, geographical, or according to objects or occupation or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration."

19. In *Lachhman Das v. State of Punjab*, AIR 1963 SC 222, this Court while reiterating the test to be applied for examining the vires of an Act on the touchstone of Art.14 sounded a note of caution that over - emphasis on the doctrine of classification may gradually and imperceptibly deprive the Article of its glorious content. This Court observed:

"50. the doctrine of classification is only a subsidiary rule evolved by Courts to give a practical content to the said doctrine. Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the article of its glorious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the doctrine of classification."

20. The content and the sweep of Art.14 of the Constitution was once more examined in *E.P. Royappa v. State of Tamil Nadu*, 1974 (4) SCC 3, where this Court laid bare a new dimension of Art.14 and described its activist magnitude as a guarantee against arbitrariness. Speaking for the Court, P.N. Bhawati, J. as His Lordship then was said:

"85. Art.16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Art.16 is only an instance of the application of the concept of equality enshrined in Art.14. In other words, Art.14 is the genus while Art.16 is a species. Art.16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Art.14 and Art.16 is equality and inhibition against discrimination Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art.14, and if it effects any matter relating to public employment, it is also violative of Art.16. Art.14 and Art.16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Art.14 and Art.16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Art.14 and Art.16."

In the case of group captain the Apex Court held that distinction is not justified since both constitute one rank and one cadre and

both groups were promotees. In the above circumstances, following was laid down in paragraphs 25 and 28 :-

" 25. In the case at hand, Group Captains constitute one rank and cadre. The distinction between a Group Captain (Select) and Group Captain (Time Scale) is indicative only of the route by which they have risen to that rank. Both are promotees. One reaches the rank earlier because of merit than the other who takes a longer time to do so because he failed to make it in the three chances admissible to them. The select officers may in that sense be on a relative basis more meritorious than time scale officers. But that is bound to happen in every cadre irrespective of whether the cadre comprises only directly recruited officers or only promotees or a mix of both. Inter se merit will always be different, with one officer placed above the other. But just because one is more meritorious than the other would not by itself justify a different treatment much less in the matter of age of superannuation.

28. It is trite that birthmark of an officer who is a part of the cadre of Group Captains cannot provide an intelligible differentia for the classification to be held valid on the touchstone of Art.14 and Art.16 of the Constitution. We may in this regard gainfully refer to the decision of this Court in Col. A. S. Iyer and Others v. Bala Subramanyan and Others, 1980 (1) SCC 634, where Krishna Iyer J. as his Lordship then was rejected a somewhat similar argument to

justify a classification based on the birthmarks of the members of a cadre. He said:

"45.Let us eye the issue from the egalitarian angle of Art.14 and Art.16. It is trite law that equals shall be treated as equals and, in its application to public service, this simply means that once several persons have become members of one service they stand as equals and cannot, thereafter, be invidiously differentiated for purposes of salary, seniority, promotion or otherwise, based on the source of recruitment or other adventitious factor. *Birthmarks of public servants are obliterated on entry into a common pool and bur country does not believe in official casteism or blue blood as assuring preferential treatment in the future career.* The basic assumption for the application of this principle is that the various members or groups of recruits have fused into or integrated as one common service. Merely because the sources of recruitment are different, there cannot be apartheidisation within the common service." (emphasis supplied)"

The above case is a clearly distinguishable case since the court was examining the discrimination in one post and one cadre. Both the groups were promotees who were appointed in one cadre hence, the classification was held to be bad. As noted above, present is a case where one group of the employees, i.e., abkari workers, does not form part of any cadre or any post. They have been absorbed in the Corporation due to various policy decisions of the State Government. They are neither included in the cadre nor in a post or in the seniority list maintained by the

Corporation. Thus, the above judgment of the Apex Court is clearly not applicable.

21. The learned Single Judge allowed the writ petitions relying on the judgment of the Apex Court in **State of Uttar Pradesh v. Dayanand Chakrawarty (supra) and Union of India v. Atul Shukla others** (supra) which are distinguishable and not applicable to the facts of the present case as observed above. Learned Single Judge observed that the yardstick of retirement benefits cannot be denied to other employees of the Corporation. Learned Single Judge lost sight of the Government Orders issued by the State Government providing that the abkari workers shall continue to be registered under the Abkari Workers Welfare Fund Board and be governed by the Abkari Workers Welfare Fund Scheme. Aforesaid conditions were also incorporated in the settlement which was entered into by the Corporation and different unions of the abkari workers in the year 2002 as noted above. The retirement benefits of employees of the Corporation and abkari workers are governed by different set of Rules and Schemes and are entirely different. The material

differences in the employees of the Corporation as well as the abkari workers, as noted above, clearly prove that there was a valid classification between the two groups of employees for the purpose of superannuation.

22. From the above discussion, the most prominent distinction which appears in the two groups of employees, i.e., abkari workers and regular employees of the Corporation is the difference in age of superannuation as per different statutory provisions governing superannuation. According to clause 2(m) and clause 35 of the Scheme, 1990 the abkari workers were entitled to continue till the age of 60 years and thus their age of superannuation was statutorily fixed as 60 years. They were absorbed in the service of the Corporation due to reasons above noted but they continued to be governed by the statutory Scheme, 1990 as per the Government Orders issued from time to time and settlement entered between the Corporation and Unions of the abkari workers. The age of superannuation of abkari workers was throughout governed by the statutory Scheme, 1990 which age was statutorily fixed as 60 years. Government

Order was issued by the State of Kerala on 06.08.2005 by which the age of superannuation of the abkari workers was limited to 55 years like those of regular employees of the Corporation. The Government subsequently corrected the said Order by its subsequent Order dated 22.03.2008 by which the age of superannuation of abkari workers was fixed as 60 years. Subsequently by another Government Order dated 18.11.2009, the Government Order dated 22.03.2008 was directed to have retrospective effect from 06.08.2005. Reason was obvious that the age of retirement of abkari workers was 60 years which was statutorily fixed and the Government could not have limited it by a Government Order. Realising this, the Government clarified the said situation. One of the conditions of absorption of abkari workers was that they will continue to govern by the 1969 Act and the Scheme, 1990. When age of superannuation of both these group of employees was governed by different statutory provisions fixing their age of superannuation differently, it was a valid classification. The submission of the Writ Petitioners that both being employees of the Corporation there cannot be any

difference in the age of superannuation is not correct. This difference between two groups of employees was sufficient to sustain the difference in the age of superannuation. The Writ Petitioners could not have claimed parity with regard to age of superannuation of abkari workers on account of peculiar facts and the statutory provisions governing the abkari workers. It appears that attention of the learned Single Judge was not invited to the above aspect of the matter. Other major difference between service conditions of two groups of employees has already been noted in paragraph 16 as above which furnish sufficient rationale for classification.

23. In view of the foregoing discussions, we arrive at the conclusion that the classification between the regular employees of the Corporation and abkari workers in so far as the age of retirement is concerned, is a valid classification which has a rationale nexus to the object sought to be achieved. The judgment of the learned Single Judge holding otherwise cannot be sustained and deserves to be set aside. However, we are of the view that if any employee of the Corporation has discharged

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his duties under the interim order of the court and has also received his emoluments, no recovery of salary already received be effected from any of the employees.

Subject to the above, the writ appeals are allowed. The judgment of the learned Single Judge dated 11.2.2015 is set aside and all the writ petitions are dismissed. However, there shall be no recovery as indicated above. Parties shall bear their own costs.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**

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