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Court : 04
Item : 26/36-39/77-86
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WPCT 14 of 2023 (26)
(Ratan Kumar Mallick & Ors. Vs. Union of India & Ors.)
&
WPCT 35 of 2023 (36)
(Manu Ghosh & Ors. Vs. Union of India & Ors.)
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WPCT 36 of 2023 (37)
(Tapan Kumar Dey & Anr. Vs. Union of India & Ors.)
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WPCT 37 of 2023 (38)
(Tileswar Das & Ors. Vs. Union of India & Ors.)
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WPCT 38 of 2023 (39)
(Manik Chauhan & Anr. Vs. Union of India & Ors.)
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WPCT 20 of 2023 (77)
(Dhurjoti Mukherjee Vs. Union of India & Ors.)
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WPCT 21 of 2023 (78)
(Gopal Das Vs. Union of India & Ors.)
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WPCT 22 of 2023 (79)
(Subrata Ghosh Vs. Union of India & Ors.)
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WPCT 23 of 2023 (80)
(Goutam Barui Vs. Union of India & Ors.)
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WPCT 24 of 2023 (81)
(Prem Nath Mandal Vs. Union of India & Ors.)
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WPCT 25 of 2023 (82)
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WPCT 26 of 2023 (83)
(Bikash Kumar Prasad Vs. Union of India & Ors.)
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WPCT 27 of 2023 (84)
(Rajan Kahar & Ors. Vs. Union of India & Ors.)
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WPCT 28 of 2023 (85)
(Ganga Das Vs. Union of India & Ors.)
&
WPCT 39 of 2023 (86)
(Betab Hari Vs. Union of India & Ors.)

Mr. A.K. Gayen, Advocate
Mr. A.A. Gayen, Advocate
.....for the Petitioner (in item no. 26)
Mr. Kedaraswar Chakraborty, Advocate
Mr. Saptarshi Chakraborty, Advocate
.....for the Petitioner (in item no. 36 to 39)
Mr. Anirban Datta, Advocate
Mr. Probal Sarkar, Advocate
.....for the Petitioner (in item no. 77 to 86)
Mr. D.N. Ray, Advocate
Mr. Arpa Bhattacharya, Advocate
.....for the Union of India

All the bunches of writ-petitions are taken up together as the common question of law is involved therein and identical reliefs are sought for by the respective writ-petitioners. It would not be appropriate to adumbrate the facts of each case as the consideration is restricted on a common issue relating to LARSGESS Scheme framed by the Railway Authorities and was ultimately terminated/withdrawn after the orders passed in various judicial proceedings instituted in several High Courts and the Supreme Court.

The Safety Related Retirement Scheme covering safety categories with grade pay of ₹1900 was framed by the Railway Board vide letter dated September 11, 2010. Subsequently the nomenclature of the said scheme was changed to Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGEES) with grade pay of ₹1800 on June 28, 2011. By virtue of the said LARSGESS Scheme, certain employees who fulfilled the conditions mentioned therein were permitted to seek voluntary retirement and a further benefit was extended to their wards, if found suitable, to be appointed simultaneously. The conditions and parameters enshrined in the said Scheme encourages various employees who are at the verge of retirement to opt the benefit under the said Scheme with the fond hope that his/her ward would be appointed in the Railways. Several applications were filed by the employees seeking voluntary retirement which was accepted by the competent authority and, in fact, appointment to the ward was also made.

Slew of litigation started pouring in different High Courts as well as in Supreme Court impinging the said LARSGESS Scheme and the benefits extended thereto, more particularly, appointment to the ward in lieu of the

voluntary retirement obtained by the concerned employee.

The first of such matter was decided by the Punjab and Haryana High Court in Kala Singh Vs. The Union of India in CWP 7714 of 2016 wherein it was observed that the aforesaid Scheme, prima facie, does not withstand on the anvil of Articles 14 and 16 of the Constitution of India. It was further held that such Scheme is intended with oblique motive to open a backdoor for appointment of several persons without undergoing the rigor of the procedure for public employment and, therefore, it militates against the public employment and offends the constitutional mandate requiring equal opportunity to all legible persons for public employment. Ultimately the High Court directed the Union of India to revisit such policy in the light of the observations made therein. It is manifest from the record that pursuant to the aforesaid order the said Scheme was put on hold and no further step was expected to be taken thereupon.

The order of the Punjab and Haryana High Court was assailed before the Supreme Court in a ***Special Leave Petition (Civil) 508 of 2018*** and was disposed of on January 8, 2018 directing the Union of India to take a conscious decision in the matter within a stipulated time. It was further observed that, in the event, any party is affected by the decision taken, such authority may take a decision in accordance with law. Pursuant to the aforesaid direction the Union of India took a conscious decision on March 5, 2019 to terminate the said Scheme with retrospective effect from the date when the said Scheme was put on hold on October 27, 2017 with clear stipulation that no further appointment shall be made under the said Scheme.

The comment on second paragraph of the decision dated March 5, 2019 put an impetus to the petitioners to contend that the appointments of the ward made prior to the date when the said Scheme was put on hold were not disturbed; rather allowed to continue subject to the conditions that all formalities have been completed and the ward is found fit for appointment. Based upon the aforesaid stand of the Railways, the Tribunals were approached assailing that the moment the appointments were made prior to the date when the Scheme was put on hold, in view of paragraph 2 of the said decision, their appointments are required to be regularised and the status must be treated under the ordinary Rules applicable in this regard without any reference to LARSGESS Scheme which were subsequently terminated.

At the first blush the stand appears to us tenable but after perusing several orders passed by the Supreme Court in different proceedings including the Constitutional Bench decision, we think that we have to take a call of determining whether such right still subsists and the relief so claimed can be granted to those writ-petitioners.

An argument is advanced by some of the writ-petitioners that there is a clear distinction between the appointment and the reinstatement which cannot be construed as synonymous. According to the said learned Advocate what has been foreclosed by virtue of the aforesaid decision of terminating the said Scheme is a further appointment and does not impinge upon the appointments and/or reinstatement already done prior to the date when the Scheme was put on hold and, therefore, the Tribunal ought to have considered the aforesaid aspect before proceeding to dismiss the tribunal application.

Some of the writ-petitioners submit that after acceptance of the application seeking voluntary retirement, the process have been put on hold though it relates to a pre-date position when the Scheme was put on hold and, therefore, such cases must be segregated from the cases considered by the Apex Court. Some of the petitioners submit that the Scheme was terminated retrospectively which logically infers that any action which has been taken prior to the said date are saved and does not come within the peripheral of the decisions rendered by the Supreme Court. A further argument is advanced that the authorities cannot withhold the pensionary benefits after accepting the option for voluntary retirement as Rule 102 of Railway Service Pension Rules provides the pension to be granted from the date of cessation of work which, in fact, should be calculated from the day when the option for voluntary retirement was accepted.

The conspectus of the aforesaid arguments leads to an inescapable issue relating to the extinction of benefit under the LARSGESS Scheme to the ward who were either initially appointed prior to the date when the said scheme was put on hold or reinstated or the process was initiated pre-dating the date when scheme was put on hold but no conscious decision has been taken as yet.

Though feebly some of the Counsel for the petitioners argued that the tribunal ought not to have ventured to dismiss the tribunal application without inviting the reply but have proceeded to argue on the aforesaid points as narrated hereinabove. The Tribunal proceeded on the basis of the several orders passed in the litigation which ultimately reached to the Supreme Court on an application under Article 32 of the constitution of India.

As indicated above the Punjab and Haryana High Court declared the said scheme invalid and contrary to the fundamental principles enshrined under Articles 14 and 16 of the Constitution of India in relation to public employment. There has been a categorical finding rendered by the same High Court that such scheme is designedly made to permit the backdoor entry to the ward of the persons without undergoing the process required to be followed for public employment. Though it is called as beneficiary Scheme yet the object it sought, offends the constitutional provisions and opposed to the constitutional ethos relating to public employment. Even the Apex Court declined to interfere with the order of the said High Court and directed the union of India to consider the matter in the light of the observations made by the High Court.

Subsequently a conscious decision was taken to put such scheme on hold from a retroactive date that is from the date when the said Scheme was put on hold. The bunch of the writ-petitions which were either before the Supreme Court or subsequently filed came up for disposal before the Supreme Court in the year 2021. One of the writ-petitions filed under Article 32 of the Constitution of India being **Writ Petition (CIVIL) No. 1407 of 2019** came up before the Constitutional Bench of Supreme Court seeking appointment under the said LARSGESS Scheme on the premise that once the right has fructified into a legally enforceable right, the Union of India cannot retract therefrom and deny such right under the same Scheme.

The Apex Court after noticing the fact that the Scheme has been terminated and an earlier Special Leave Petition was disposed of taking into account the same, no further consideration is required. It was succinctly

observed that the moment the Scheme was terminated and/or withdrawn, the benefit flowing therefrom cannot be afforded to any of the persons in the following:-

“Reliance is also placed on the subsequent order dated 26.03.2019 passed in Writ Petition (Civil) No. 219 of 2019 to submit that applications preferred by some persons who had offered their candidature before the withdrawal of the Scheme were directed to be considered. The order shows that this Court did not rule on the submission but allowed the concerned persons to make representation to the authorities.

However, in number of matters taken up later, this Court refused to accept similar petitions filed under Article 32 of the Constitution of India on the premise that once the Scheme itself was withdrawn, no benefit whatsoever including one of consideration of representation could be afforded to any of the persons.”

Subsequently another ***Writ Petition (CIVIL) No. 78 of 2021*** was filed for issuance of mandamus directing the Union of India to appoint the petitioners therein in their respective cadre and to issue an appropriate order thereupon on January 29, 2021. The Apex Court noticed the judgement of Punjab and Haryana High Court and the order passed in the Special Leave Petition which was passed against the said order and decision of the Railways in terminating/withdrawing of the said Scheme with effect from a date when the said Scheme was put on hold, observed that the moment the said Scheme is held to be the route to favour a section of the employees by extending the appointment of their ward is contrary to Articles 14 and 16 of the Constitution of India, it does not create any inchoate and vested right into such person to claim benefit under the said Scheme. The Apex Court further held that there cannot be any legitimate expectation to such persons in seeking an appointment under the said Scheme which has now been closed.

The Counsel appearing for some of the writ-petitioners is very much vocal on the word 'now' having been used in the said order. According to them the said word 'now' has to be interpreted *in presenti* and cannot be related back to an act which has already been done and a right has fructified. We are unable to accept the interpretation sought to be made in this regard. The word has to be interpreted in the context for which it is used and not in isolated and/or abstract manner. Culling out a portion from the context and to interpret differently is not permitted nor does the Rule of interpretation suggest so. The aforesaid word 'now' has been used in the context of vested and inchoate right and the legitimate expectation and, therefore, the same have to be interpreted in the light of the same. The moment the Apex Court has held that it does not create any vested right because of the Scheme having been closed such right cannot survive having allegedly created pre-dating the scheme which was put on hold. It has been categorically observed that any relief sought for would allow the backdoor entry and the moment the Union of India terminated the Scheme it forecloses all such rights in the following:-

"The reliefs which have been sought in the present case, as already noted earlier, are for a writ of mandamus to the Union of India to appoint the petitioners in their respective cadres. A conscious decision has been taken by the Union of India to terminate the scheme. This has been noticed in the order of this Court dated 6 March 2019, which has been extracted above. While taking this decision on 5 March 2019, the Union of India had stated that where wards had completed all formalities prior to 27 October 2017 (the date of termination of the Scheme) and were found fit, since the matter was pending consideration before this Court, further Instructions would be issued in

accordance with the directions of this Court. Noticing the above decision, this Court, in its order dated 6 March 2019, specifically observed that since the Scheme stands terminated and is no longer in existence, nothing further need be done in the matter. The Scheme provided for an avenue of a back door entry into the service of the railways. This would be fundamentally at odds with Article 16 of the Constitution. The Union government has with justification discontinued the scheme. The petitioners can claim neither a vested right nor a legitimate expectation under such a Scheme. All claims based on the Scheme must now be closed.

In view of the above factual background, we are not inclined to entertain the petition under Article 32. The grant of reliefs to the petitioners would only enable them to seek a back door entry contrary to the orders of this Court. The Union of India has correctly terminated the Scheme and that decision continues to stand.”

There is a fallacy in the stand of the petitioners in construing that the said order to operate prospectively which does not appear to us is in tune with the spirit of the order passed by the Supreme Court as noted above. However, the Railway has created an ambiguity in a decision dated March 5, 2019. It has been indicated therein that no further appointment shall be made under the Scheme which in its grammatical meaning would convey an unambiguous notion that a fresh appointment shall not be made and there is a possibility of logical inference that the appointments which have already been made are saved and/or kept outside the purview of the aforesaid decision. The Apex Court have categorically held that the said Scheme is at odd with the Article 16 of the Constitution of India and in such perspective it is held that it does not create any vested right nor the concept of legitimate expectation can be applied. The moment the right has been taken away, it is construed to have been taken away for all

time to come, more particularly, on the categorical findings that it offends Article 16 of the Constitution of India.

The Scheme shall *per se* violate the provisions contained under Articles 14 and 16 of the Constitution of India, which cannot be permitted to remain alive as it would continue to violate the aforesaid Constitutional provision. The moment the Court found such Scheme offending the Constitutional provisions, it cannot be regarded as voidable from retrospective date but must be treated void for all intend purposes.

It would be fallacious to suggest that despite having violated the Constitutional provisions, it would remain a legally enforceable right as the cancellation/termination/withdrawal is to take effect from a particular date. No right therefor created to any of the petitioners in seeking appointment or reinstatement under the said Scheme and, therefore, we do not find any merit in the aforesaid contention.

The moment the initial appointment is found in violation of the provisions contained under Articles 14 and 16 of the Constitution of India, the subsequent reinstatement under the said Scheme cannot revalidate such appointment. The position would have been different if such appointments or reinstatements are made under the different Schemes upon following the procedures required therefor.

So far as the claim of pension is concerned in some of the writ-petitions, we do not find any such prayer having been made or any relief claimed thereupon. Apart from the same, we had an occasion to notice the speaking order dated February 13, 2019 passed in respect of some of the writ-petitioners where the representation was turned

down on the score that the qualifying service required for the said LARSGESS Scheme was not fulfilled.

We noticed an important facts from the aforesaid speaking order that the moment the orders were passed and the sense was developed in the Union of India that the said Scheme cannot withstand on the Constitution provision, employment offer was made to the employee to resume the duty which does not appear to have been done and, therefore, we do not think that it a fit case where the prayer for pensionary benefit from the date of the cessation contemplated under Rule 102 of the said Rule can be applied. The cessation can only be made when the employ without any fault on his part were ceased to discharge the duties admissible to the said post but not to such employee who voluntarily did not join the duty despite an order having passed in this regard.

We thus do not find any merit warranting interference with the order of the Tribunal.

All the writ-petitions are accordingly **dismissed**.
No order as to costs.

Urgent Photostat Certified Copy of this order be given to the parties, if applied for, within three days of its application.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

