IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

211 **CWP-25634-2016 (O&M)**
Date of Decision: 07.04.2025

VIJAY SINGH YADAV

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Ajay Bhardwaj, Advocate
for the petitioner.

Mr. Tapan Kumar, DAG, Haryana
for respondents No.1 to 3 and 6.

Mr. Sudhir Nar, Senior Panel Counsel
for respondents No.4 and 5.

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VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition has been filed seeking the setting aside of the following: (i) the letter dated 30.03.2007 issued by the Financial Commissioner and Principal Secretary to the Government of Haryana, Social Justice and Empowerment Department, Chandigarh, sanctioning expenditure related to the District Rehabilitation Centre, Bhiwani; (ii) the letter dated 21.06.2007 issued by the Director, Social Justice and Empowerment, regarding the running of the Rehabilitation Centre, Bhiwani; (iii) the communication dated 10.03.2008, whereby the Government decided to absorb the employees working at the District Rehabilitation Centre, Bhiwani, into the Social Justice and Empowerment Department by taking over the entire project and prescribing certain conditions; and (iv) the order dated 01.02.2011, whereby the Financial

Commissioner and Principal Secretary directed that willing employees working at the District Rehabilitation Centre, Bhiwani, be absorbed into the Social Justice and Empowerment Department with effect from 21.04.2008, being the date of approval by the Council of Ministers.

A further direction has been sought by the petitioner for directing the respondents to disburse the pensionary and all other consequential benefits alongwith interest.

Briefly summarized, the facts of the present case are that in early 1983, the Government of India launched the District Rehabilitation Centre (DRC) Scheme with financial assistance from the National Institute of Disability Rehabilitation and Research (NIDRR), U.S. Department of Education, and UNICEF. The scheme aimed to provide a comprehensive package of model rehabilitation services to disabled persons in rural areas across India. Under this initiative, 11 District Rehabilitation Centres were established across ten states, namely Maharashtra, Karnataka, West Bengal, Odisha, Uttar Pradesh, Tamil Nadu, Andhra Pradesh, Chhattisgarh, Rajasthan, and Haryana. In addition, four Regional Rehabilitation Training Centres (RRTCs) were set up in Cuttack, Chennai, Lucknow, and Mumbai.

The project initially operated in a pilot phase, which concluded on 31.12.1989. Thereafter, the Ministry of Social Justice and Empowerment, Government of India, continued to fund these centres during subsequent phases, extending their services and presence across the geographical areas of the respective States. The primary objective of the scheme was rehabilitation of the disabled persons.

To execute the project, a Project Coordination Committee was constituted, with the Project Coordinator serving as the main implementing agency and work as the Member Secretary of the State Level Advisory Committee. The scheme, dated 03.01.1983, was circulated to the concerned State Governments by the Joint Secretary of the Union of India and scheme outlined a comprehensive package of services for disabled persons. The specific details are however not relevant for the final adjudication of the present petition and, therefore, need not be elaborated upon.

The Office of the Project Director, District Rehabilitation Centre Scheme, New Delhi, issued a letter dated 18.08.1987, informing that the employees working in the District Rehabilitation Centres would be eligible for State Government pay scales, allowances, and benefits, including rules and norms relating to pension, Provident Fund, gratuity, and other emoluments, as applicable to State Government employees. The relevant extract of the letter dated 18.08.1987 reads thus: -

> *"A point has repeatedly been raised regarding salary structure, allowance and other government benefits pertaining to employees working in our District Rehabilitation Centre located in your respective State. The matter has also been recently discussed in the National Advisory Committee meeting held recently at New Delhi wherein it has been clarified that DRC employees will be eligible for State Govt. pay scales and allowance. It is further reiterated that all State Govt. Rules/norms on Pension, Provident Fund, Gratuity etc. applicable to State Govt. employees, shall also be applicable to employees working in District Rehabilitation Centre and Primary Health Centre Rehabilitation Units. You may like to take suitable appropriate action under intimation to all concerned."*

It was further circulated by the Government of India vide letter dated 17.06.1988 that the District Rehabilitation Centre Scheme is a Central Government scheme implemented through the State Governments. It was clarified that the District Rehabilitation Centres are not autonomous bodies, as they are neither separate nor distinct registered organizations, but form an integral part of the Central Government scheme being executed through the respective State Governments.

The State of Haryana constituted a State Level Advisory Committee, as per the norms of the scheme, headed by the Commissioner and Secretary to the Government of Haryana in the Department of Social Welfare vide Gazette Notification dated 23.12.1985. This Committee was subsequently superseded by notifications issued on 23.09.1986, 14.05.1993, 08.12.1995, and 22.09.2003. Two Selection Committees were also constituted by the Government of Haryana for the appointment of staff in the District Rehabilitation Centre, Bhiwani, one each for pay scale above and below 1640-2900. The posts were advertised in leading newspapers, and the process of selection and appointment of staff at the District Rehabilitation Centres was conducted by the State Government itself.

Pursuant to this recruitment process, the petitioner was selected and he joined as a Social Worker on 01.06.1989 (afternoon) and served until 10.01.1995 (forenoon). Thereafter, the petitioner was appointed as District Rehabilitation Officer on 10.01.1995 (afternoon) and continued in that position until superannuation on 30.04.2015 at the District Rehabilitation Centre, Bhiwani (Department of Social Justice & Empowerment, Haryana).

The services of the petitioner and other employees of the District Rehabilitation Centres were governed by the Punjab Civil Services Rules, as applicable to Haryana Government employees. Their service conditions, including pay scales, annual increments, earned leave, commuted leave (medical leave), Assured Career Progression (ACP), efficiency bar, disciplinary rules, and other related matters, were regulated under the said Civil Services Rules.

Some instances cited in the petition for demonstrating that the petitioner's services were governed by the State Civil Services Rules are as follows:

1. Earned leave was granted to the petitioner in accordance with Rule 8.133, Volume I, Part I of the Punjab Civil Services Rules, on 22.02.1995, 24.07.1995, and 03.06.1998.
2. Sanctions for clearing the efficiency bar for employees working at the District Rehabilitation Centre, Bhiwani, were issued on 15.03.2005, in accordance with Rule 4.8, Volume I, Part I of the Punjab Civil Services Rules.
3. Assured Career Progressions (ACPs) were granted to employees of the District Rehabilitation Centre, Bhiwani, on 15.02.2006, under Rule 4.4(c) read with Rule 4.14(2) and Rule 4.9 of the Punjab Civil Services Rules, Volume I, Part I.
4. Departmental enquiries and disciplinary actions against employees working at the District Rehabilitation Centre,

Bhiwani, were initiated under the Haryana Civil Services (Punishment and Appeal) Rules.

It is further submitted that even appointments under the ex-gratia compassionate scheme were made in accordance with the State s scheme. It is submitted that during the years 1990-91, certain posts at the District Rehabilitation Centre, Bhiwani, were abolished, and the affected employees were adjusted/appointed in the Department of Social Justice and Empowerment, Haryana. Their past service rendered at the District Rehabilitation Centre, Bhiwani, was counted towards their pensionary benefits establishing the relationship of the employees of the District Rehabilitation Centre, Bhiwani with the Government of Haryana.

Further, similar relief has been extended to other employees, including Mr. Raj Kumar Khayalia, PHC Rehabilitation Officer, and Mr. Jai Gopal, Storekeeper, who were absorbed into various departments of the Government of Haryana and were also granted the benefit of counting of their past service at the District Rehabilitation Centre, Bhiwani, towards pensionary entitlements. Reference is also made to 18 additional employees who, after being appointed at the District Rehabilitation Centre, Bhiwani, were adjusted into the Department of Social Justice and Empowerment, Haryana, and were conferred the benefits under the Old Pension Scheme.

Counsel contends that one Prem Chand, Assistant, who retired on 30.04.2000 from the District Rehabilitation Centre, Bhiwani, was denied retiral benefits on the ground that the employment status of employees working at the District Rehabilitation Centre, Bhiwani, was unclear. Numerous representations were submitted by the employee to the State Government as well as the Central Government; however, no decision was taken.

Meanwhile, employees of the District Rehabilitation Centres at Midnapur (West Bengal) and Mysore (Karnataka) approached the Central Administrative Tribunals at Calcutta and Bangalore, respectively, seeking determination of their employment status. Vide judgment/order dated 14.07.2000, the Central Administrative Tribunal, Calcutta, held as under: -

> *"12. So we are, therefore, of the clear opinion that applicants were appointed by the Project Officer for and on behalf of the Central Government and the Central Government had direct control over the DRC and fund is being provided by Central Government and we are satisfied from facts that the prima facie it is for determination of the relationship between the employer and the employee which is in existence in this case; Central Government is employer of the applicants and the employees are entitled to claim to be employees of the Central Government. In view of the aforesaid circumstances, we find that there cannot be any dispute in this case that the Tribunal has no jurisdiction to adjudicate the grievance of the applicants who were directly appointed and being controlled by the Central Government. It is true that the aforesaid applicants are getting the pay and allowances as per rate prescribed by the Govt. of West Bengal. It is found that the scale prescribed by the government of West Bengal has been adopted by the concerned authorities under the scheme. So, were adoption of the scale of the State Government does not disentitle the applicants the right of status of the Central Government employees under the scheme.*
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> *13. In view of the aforesaid circumstances we are of the view that the applicants are the employees of the Central Government though their salary is being paid as per scale of the State Government. Under the circumstances stated above, we allow the*

> *application with a direction upon the respondents to treat the aforesaid applicants as employees of the Central Government and to grant the relief's to the applicants in accordance with the rules in respect of salary, provident fund etc. with immediate effect. No cost."*

The aforementioned order/judgment dated 14.07.2000 was challenged before the Calcutta High Court, which was dismissed. Consequently, Civil Appeal No. 7999 of 2002 was filed before the Hon'ble Supreme Court, challenging the judgments of both the Central Administrative Tribunal, Calcutta, and the Calcutta High Court. Similarly, the petitioner, along with other employees, filed O.A. No. 997/HR/2004 before the Central Administrative Tribunal, Chandigarh. This case was decided by an order dated 18.04.2005, which held as follows:

> *"We hold that the applicants in the present O.A. are also entitled to this relief as given by Calcutta Bench, C.A.T. and Bangalore in Annexure A-2 & A-11 in the same terms. Respondents shall extend to the applicants similar benefits as allowed in Annexure A-2 and A-12 which shall, however, be subject to the rights of employees of DRCs as per decision by the Hon'ble Supreme Court in the SLP pending before it in which the orders of Calcutta High Court Annexure A-11 and C.A.T. Calcutta are under challenge."*

Learned counsel for the petitioner contends that during the pendency of Civil Appeal No. 7999 of 2002, the Government of India decided to discontinue the District Rehabilitation Centre Scheme, effective from 01.04.2006. The Government advised the State Governments to take over these centres for the welfare of persons with disabilities. Furthermore, an option was provided to the employees of the District Rehabilitation Centres, allowing them to choose whether they wished to be absorbed by the Central Government or the State Government. The terms and conditions for such absorption were also laid down.

Learned counsel for the petitioner contends that, at the request of the Government of India, the State of Haryana initiated the process of absorbing the employees of the District Rehabilitation Centre, Bhiwani. On 06.01.2006 and on 10.03.2006, the Chief Minister of Haryana approved the takeover of the project, effective from 01.04.2006, in the public interest. Meanwhile, the Hon'ble Supreme Court resolved the issue under challenge in Civil Appeal No. 7999 of 2000. Learned counsel for the petitioner further contends that, in light of the judgment of the Hon'ble Supreme Court, the employees working at the District Rehabilitation Centres are now regarded as employees of the respective State Governments, as their services are governed by the Service Rules of the State Government.

He further contends that the respondent-State Government eventually issued a letter dated 10.03.2008 regarding the absorption of the petitioner, as well as other employees of the District Rehabilitation Centre, Bhiwani. The relevant extract thereof reads thus: -

> *"2. Whereas the issue pertaining to absorption of employees of the District Rehabilitation Centre, Bhiwani was under consideration of the government, the Governor of Haryana is pleased to accord sanction for the absorption of the employees working in the District Rehabilitation Centre, Bhiwani in the Department of Social Justice & Empowerment, Haryana on the following terms and conditions: -*
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> *(i) The staff of District Rehabilitation Centre, Bhiwani shall be given a separate identity. They will be governed under the prevalent Pension & Gratuity Rules.*
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> *(ii) XXX XXX XXX*

(iii) They would be paid salaries on the same scale of pay and would also be entitled to regular increments and other benefits as admissible to Haryana Government Employees as heretofore.

XXX XXX XXX"

Learned counsel for the petitioner contends that, by virtue of the sanction conveyed through Memo No. 487-SW-1-2008 dated 10.03.2008, the staff of the District Rehabilitation Centre, Bhiwani, has been placed under the prevalent Pension and Gratuity Rules, which were modified on 01.01.2006. As a result, they were brought under the New Pension Scheme.

Learned counsel contends that, since the petitioner and other employees of the District Rehabilitation Centre, Bhiwani, were to be paid salaries on the same scale of pay and were entitled to regular increments and other benefits applicable to Haryana Government employees, the benefit of the Old Pension Scheme should also be extended to the petitioner. It is argued that the condition under which the sanction was accorded, governing the petitioner s services under the modified Pension and Gratuity Rules, is illegal and unenforceable to that extent.

Additionally, it is submitted that, in light of the judgment of the Hon'ble Supreme Court, the petitioner remained an employee of the State Government ever since his induction into service, and therefore, the benefit of pension already extended to similarly situated employees of the State Government should also be granted to the petitioner. Reliance is placed by the counsel for the petitioner on the ***judgment dated 10.11.2006*** passed by the Hon'ble Supreme Court passed in ***Civil Appeal No.7999 of 2002*** titled as

"***District Rehabilitation Officer & Others Vs. Jay Kishore Maity & Others"***

The relevant extract of the same is reproduced hereinafter below: -

> *"11. The Parliament enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The Act was enacted to give effect to the proclamation on the full participation and equality of people with disabilities on both Central and State Governments. Implementation of its provisions is the primary responsibility of the State Governments. The projects were started at different centres in different States by the Central Governments by way of a Scheme. The funds for the said projects initially came from the Central Government. The purpose of a pilot project has been noticed by us hereinbefore. The control of the Rehabilitation Centres for the benefit of the people for whom the same were started was with the concerned State Governments.*
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> *XXX XXX XXX*
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> *14. [See also* ***Haldia Refinery Canteen Employees Union and Others v. Indian Oil Corporation Ltd. and Others 2005 (3) SCT 81 (SC): 2005 (5) SCC 51]****.*
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> *15. In* ***State of Karnataka and Others v. KGSD Canteen Employees' Welfare Assn. and Others 2006(1) SCT 323 (SC): [(2006) 1 SCC 567]****, this Court held:-*
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> > *"We, however, intend to point out that in a case of this nature even an industrial adjudicator may have some difficulty in coming to the conclusion that employees of a canteen for all intent and purport are employees of the principal employer."*
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> *16. We, therefore, with respect, are unable to agree with the findings of the Central Administrative Tribunal as also the Division Bench of the High Court.*
>
> *17. A question has arisen as to whether the employees are the employees of the State of West Bengal or the District*

Rehabilitation Centres. In view of the order proposed to be passed by us, it may not be adverted to at this state as we are of the opinion that the projects should be continued by the State of West Bengal and the State of Karnataka as the case may be. Even if the States think it fit to close down the project, the services of the employees working in the rehabilitation centres should be continued.

18. In a case of this nature, however, we think it expedient to invoke our jurisdiction under Article 142 of the Constitution of India. The Central Government has categorically stated that those employees who would opt for employment under the Central Government may be accommodated in its ongoing projects. Pursuant thereto or in furtherance thereof, the concerned employees who have affirmed affidavits showing inclination to serve any project under the Central Government, may be absorbed by it. Services of those employees may be utilized by the Central Government in any of its project. They would, however, be continued to be paid salaries on the same scale of pay. Their experience may also be considered for the purpose of determination of their seniority, subject of course to any rule which is in operation in the field. All other financial benefits including those of super annuatory benefits should be protected. It is, however, clarified that such employment under the Central Government would be temporary and personal posts which would come to an end with the retirement of the concerned employees.

19. Similarly those Respondents who have opted for their employment with the State of West Bengal or the State of Karnataka, as the case may be would be absorbed by the States of West Bengal and Karnataka, as the case may be, on the same terms and conditions as referred to hereinbefore.

20. Keeping in view the nature of order passed by us, it is clarified that the same shall not be treated as a precedent. We also make it clear that these orders have been passed by us keeping the stand taken by the parties. These appeals are disposed of with the aforementioned directions. There shall be no order as to costs."

Referring to the above, learned counsel for the petitioner vehemently argues that the findings of the Central Administrative Tribunal (CAT), as affirmed by the Division Bench of the Calcutta High Court, dismissing the writ petition, were set aside by the Hon'ble Supreme Court, which did not agree with the same. The employees of the Rehabilitation Centre were, therefore, held to be employees of the State Government. The benefits extended under the pay and salary structures granted by the respondent-State to other similarly situated employees should hence also be extended to the petitioner. Learned counsel further contends that, since the Hon'ble Supreme Court protected all other financial benefits, including those related to superannuation, a similar concession should be extended in favor of the petitioner.

Counsel for the respondent-State, on the other hand, does not dispute the factual matrix as outlined above but contends that the benefits sought by the petitioner are not admissible to him. The appointments in question were made under the District Rehabilitation Centre Scheme, launched by the Government of India in early 1983 as a pilot project, with financial assistance from the NIDRR, and the appointments were made in accordance with the guidelines as well as the terms and conditions issued by the Government of India, including the prescribed salary structure, allowances, and other government benefits. The Government of India later decided to discontinue the scheme, effective from 01.04.2006, whereupon the respondent-Department decided to take over the project in the larger public interest, alongwith all its assets and liabilities vide an order dated 10.03.2008. Since the New Pension Scheme was implemented from 01.01.2006, and the employees of the District

Rehabilitation Centre, Bhiwani, including the petitioner, were absorbed starting from 21.04.2008, the petitioner is not entitled to the benefits being sought.

In compliance to the order dated 10.03.2008, the GPF and GIS accounts of the employees of the District Rehabilitation Centre, Bhiwani, were closed, and the facility of GPF was withdrawn to implement the New Pension Scheme. In the process of releasing a payment of Rs.31.03 lacs, as per the sanction letter dated 30.03.2007, for the salaries of the staff of the District Rehabilitation Centre for the year 2006-07, it was clarified that the Central Government employees working in the DRCs would not be treated as employees of the State Government. The Government of Haryana later decided to absorb the employees of the District Rehabilitation Centre, Bhiwani, into the Department of Social Justice & Empowerment, on the terms and conditions specified in the letter dated 10.03.2008, which stated that they would be governed by the prevalent Pension and Gratuity Rules. The approval of the Council of Ministers was also obtained on 21.04.2008, with the clear condition that the absorbed employees (including the petitioner) would be governed by the New Pension Scheme. Therefore, no other financial benefits are admissible to the petitioner. Any outstanding amounts in the GPF funds of the petitioner, pertaining to the District Rehabilitation Centre, Bhiwani, was to be transferred along with interest. It is also stated that the petitioner was paid an amount of Rs.13,66,999/- towards the final payment of the GPF amount, and the petitioner was notified of the same through a letter dated 08.01.2016. Counsel for the respondent further submits that the reliance placed by the counsel for the petitioner on the judgment of the Hon'ble Supreme Court in the matter of District Rehabilitation Officer (supra) is misplaced. It is argued that the Hon'ble

Supreme Court did not make a final determination on whether the petitioners in that case were employees of the Union of India or the State Governments, and it chose not to examine the matter further. Instead, it exercised its powers under Article 142 of the Constitution of India, as a settlement scheme, under which the Central Government accepted that employees opting for employment under the Central Government would be accommodated in its ongoing projects and those opting for absorption with the State Government were undertaken to be absorbed on the same terms and conditions as outlined in paragraph 18 of the judgment. He further contends that the judgment is an outcome of a settlement between the parties and being a consensus order, it should not be considered as a binding precedent. Counsel also refers to paragraph 20 of the aforementioned judgment, wherein the Hon'ble Supreme Court specifically held that the judgment should not be treated as a precedent, as the orders were passed based on the stand adopted by the parties.

It is thus contended that the State Governments were accordingly at liberty to devise their own terms and conditions for the absorption of the employees of the District Rehabilitation Centres. The financial benefits that were ordered to be protected were incorporated as part of the settlement that had been reached among the contesting parties. Counsel argues that had the Hon'ble Supreme Court intended for the judgment to be binding on all other States, there would have been no reason for it to specifically state that the judgment should not be treated as a precedent. He further contends that there was no prohibition against the State Government from passing a fresh order for absorption on such terms and conditions as it deemed fit and appropriate. Therefore, the aforesaid judgment cannot be cited as creating a binding obligation upon the State Government to protect the earlier terms and conditions.

In rebuttal, counsel for the petitioner contends that although the scheme may have been funded by the Government of India, from the very inception of the relationship, the petitioner was an employee of the State Government. Therefore, the benefit of the pension, as prevalent at the time, should have also been extended to the petitioner. Counsel further asserts that the respondent-State s claim that no person appointed under the 1983 Scheme for the District Rehabilitation Centre(s) has been granted the benefit is wrong and is contradicted by the fact that such benefits had been extended to at least eight other individuals. A Pension Payment Order for one of these individuals, namely Mahavir Singh, has been attached to the present petition. Counsel emphasizes that this specifically pleaded fact has not been disputed or denied by the respondents, and therefore, the petitioner cannot be discriminated. Additionally, it is argued that the benefit of the pension has been extended by other States where the pilot project was implemented. Counsel further points out that the petitioner's GPF account continued until 2011, and it was only thereafter that it was closed and a CPF account number was issued. Hence, the respondent-State itself interpreted the Hon'ble Supreme Court s order in the same manner and acknowledged that the petitioner(s) are entitled to the benefits of the Old Pension Scheme.

Counsel for the respondent-State, on the other hand, submits that the benefits extended to Mahavir Singh and other similarly situated individuals were granted pursuant to the judgment dated 30.05.1996 passed by a Division Bench of this Court in CWP No.10120 of 1995. These individuals had been absorbed much earlier, and the petitioner did not choose to approach this Court at that time. Instead, the petitioner waited until after his retirement to file the present writ petition. As a result, it is argued that the present writ petition is barred by delay and laches.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

It is undisputed that the Hon'ble Supreme Court, in the judgment of District Rehabilitation Officer & Others (supra), explicitly stated that the judgment should not be treated as a precedent. This judgment was passed in exercise of the power under Article 142 of the Constitution of India, where a specific proposal from the Government of India was put forth regarding offering employees an option to volunteer for absorption into the Government of India or the respective State Governments with protection of pay and other allowances. While the judgment allows respective State Governments to frame their own terms and conditions for absorption and appointment, it specifically set aside the judgments of the Central Administrative Tribunal, Calcutta Bench, and the Division Bench of the Calcutta High Court. These earlier judgments had concluded that the employees of the District Rehabilitation Centres were employees of the Government of India. By setting these judgments aside, the Hon'ble Supreme Court implicitly determined that such employees are, in fact, employees of the State. Although the operational directions issued in the judgment were made under Article 142, the relationship between the employees and their employer had already been established prior to this. The same can always be taken aid of by this Court while adjudicating a similar controversy.

Undisputedly, some similarly placed employees (eight in number), of the District Rehabilitation Centres approached this Court by way of CWP No.10120 of 1995, seeking directions to the respondents to adjust/absorb them from the date when persons junior to them were adjusted/absorbed by virtue of decisions previously taken by the respondents on 27.11.1990. The petitioners in that case were also appointed to different posts under the same scheme. The State Government filed its written statement, raising objections about the employees not being engaged with the State Government and expressing its inability to absorb them. However, in its judgment dated 30.05.1996, the Division Bench of this Court held that the petition deserved to be allowed, as the Government thus decided to absorb the said employees w.e.f. 1991. The Government of Haryana was held liable to offer suitable jobs to the petitioners in its departments, based on their respective qualifications, and held that the relief could not be denied. The relevant extract thereof reads thus:

> *"Having heard the learned counsel for the parties and on perusal of the various documents referred to by the counsel for the petitioners, we are of the view that the petition deserves acceptance. Admittedly, the petitioners were appointed by the respondent-authorities under a scheme floated by the Union of India and are being paid their salaries till date though their services were dispensed with sometime in the year 1990. It is sometime in the year 1991 that in a meeting of State Level Advisory Committee it was decided to adjust these surplus employees in some other department It was further resolved that the Government of India would continue to give salaries to these persons as usual. Thus, for all these years-almost 6 years the petitioners are being paid salaries from the funds received by the State of Haryana from Union of India but no work has been assigned to these persons. In the meeting which was held on*

19.3.1991, Director, Social Welfare Department, Haryana was one of the participants. So, the decision taken by such a meeting was with concurrence of the Government of Haryana. This being so, it was incumbent upon the Government of Haryana to offer the petitioners a suitable job in any other department as per their qualifications. The only explanation given by respondents 1 and 2 that none of the departments of Government of Haryana has expressed its willingness to absorb the petitioners infact does not appeal to reason. On the other hand the petitioners have been able to place on record the appointment letters issued to some other persons in one or two departments (reference to which has been made in these communications/annexures) and so it is reasonable to infer that the vacancies are being filled up flouting the unanimous resolve of the State Level Advisory Committee to absorb these persons in any department as and when a vacancy arises. This having been proved on record, we find no valid ground to decline the just relief to the petitioners on the plea of more delay. We accordingly accept the petition and direct the respondent authorities to offer the petitioners appointment as per their qualifications in any of the department of the Government of Haryana without any further delay and positively within a period of three months from the passing of the order."

Even though learned State Counsel made a strong effort in arguing that since the judgment in question was passed on 30.05.1996 i.e. prior to the implementation of the New Pension Scheme on 01.01.2006 and hence the petitioner cannot claim the same benefit, however, he cannot dispute or deny that the decision of the respondents still holds substantive persuasive value while examining the case of similarly placed persons including the petitioner. It also remains undisputed that the petitioner had earlier approached the Central Administrative Tribunal, Chandigarh vide Contempt Petition No.53 of 2007 in O.A. No.997/HR/2004 for seeking absorption and for protection of his rights.

During the pendency of the above Contempt Petition, the Government issued the letter dated 21.06.2007 to continue to operate the project but declined to create any post or to treat the employees as employees of the State Government despite protecting their terms and conditions of engagement. The matter was thereafter taken up on 14.08.2007, when the State was directed to take a decision in light of the judgment of Hon'ble Supreme Court dated 10.11.2006 and to extend all benefits.

The State partly implemented the order of Central Administrative Tribunal and released a sum of Rs.36.61 lakh, as grant-in-aid but later informed vide letter dated 10.03.2008 about the decision dated 10.03.2008 to absorb the employees. The order dated 10.03.2008 was passed by the respondent-State in purported discharge of Contempt Petition No.53 of 2007. Therefore, this is not a case where the petitioner was not seeking the benefit of similar indulgence, rather the petitioner was prompt in agitating the issue and it was more of a procedural issue. Still further, pension being a continuous cause and having an impact only at the time of superannuation, a different measure needs to be adopted before it can be said to be barred by delay.

There is also no reference to the discussion, if any, held by the respondents at the time of passing the order on 10.03.2008 regarding whether the benefits extended by the Government of India and the respondent-State to other employees in the matter before Supreme Court or those who had been declared surplus earlier and eventually absorbed/adjusted into other departments, should also be extended to the petitioner. The respondent-State thus did not establish as to how there was an *intelligible differentia* and valid classification between the petitioner and other similarly placed employes. The same renders its decision as arbitrary. It has been often held that pension is a recurring cause of action, and in the event of any delay, equity and relief can be balanced. The need for justice often favours the pensioner, even in cases of delay.

Hence, I do not deem it appropriate that a pensionary right, which stands accrued in favour of the petitioner, should be defeated solely because the petitioner approached the Court later in point of time as compared to other similarly placed employees.

It has remained uncontroverted that the petitioner has continued working with the respondent-State under the Nodal Department of Social Justice & Empowerment since his appointment in 1999 and until 2008, when the aforesaid condition was imposed. The petitioner would not be made to suffer prejudice or to be held disentitled to the benefit of pension solely because he was not declared surplus at the earlier instance and hence continued serving the respondent-Department. While other individuals, appointed around the same time were absorbed and granted the benefit of the Old Pension Scheme, there is no reason why, solely due to the delay by the respondent-State in making a decision regarding the absorption/induction of the petitioner, the said benefit ought not be granted to the petitioner more-so when the petitioner was claiming this benefit.

Hence, the plea of the respondent-State that the petitioner was an employee of the Central Government at all times, having been engaged under the Scheme of 1983, having not been upheld in the judgment of the Hon'ble Supreme Court or even by the Division Bench of this Court, is repeated. The petitioner is hence held to be an employee of the State Government since his appointment and even the pay scales and all other financial benefits of the petitioner are at par with other similarly placed State Govt. employees. The respondent-State, through its own unilateral and erroneous interpretation and application of the Scheme, failed to extend the benefits to which the petitioner was otherwise entitled. The unilateral mistakes or errors on the part of the respondent-State cannot be held as a sufficient ground to allow the State to claim being absolved of its obligation.

Under the given circumstances, the present petition deserves to be allowed. The respondent-State is directed to grant the benefits to the petitioner, as extended to other similarly placed employees of the Rehabilitation Centre by the State Government, upon their absorption including the benefit of pension under the Old Pension Scheme.

The respondent-State is directed to recalculate and re-determine the amount that the petitioner needs to deposit to avail the benefits under the Old Pension Scheme. The calculation should be completed within a period of three months of receiving the certified copy of this order and communicate the same to the petitioner.

Counsel for the petitioner undertakes that upon being informed of the liability, the amount as conveyed will be deposited by him within a period of two months thereafter. The necessary steps for the release of the pensionary benefits under the Old Pension Scheme should thereafter be initiated by the respondent-State Government, in accordance with the law. This process should be completed within an additional period of three months. If the pensionary benefits are not released within the above stipulated time, the petitioner will be entitled to interest at the rate of 6% per annum, from the expiration of the above period till its actual disbursement.

Needless to mention that the amount of GPF, if any, which has already been released but has not been encashed by the petitioner shall be taken into consideration while computing and conveying the demand against the petitioner, if any.

Petition stands allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 07, 2025
Rajender

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No