



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(S). 1080 of 2017

STATE OF UTTAR PRADESH & ANR.

APPELLANTS

VERSUS

DINESH KUMAR SHARMA & ORS.

RESPONDENTS

J U D G M E N T

Augustine George Masih, J.

1. This appeal arises from the judgment and order dated 18.05.2016 passed by the High Court of Judicature at Allahabad, Lucknow Bench, whereby the respondents were held entitled to pensionary benefits under the "Antar Gramin Sadak Nirman Yojana" (hereinafter referred to as "the Scheme").

2. Respondents in this case were appointed under the Scheme to different posts between the years 1969 to 1982.
3. The *Uttar Pradesh Cane (Gazetted) Service Rules, 1979*, were applicable to the gazetted officers of the Cane Development Department, which in turn govern the service conditions of the respondents herein and no separate rules have been framed for them. They approached the High Court seeking regular pension on the same rates as were permissible to the permanent employees of the government.
4. The respondents were appointed under the aforesaid Scheme on a temporary basis and were governed by the Contributory Provident Fund (CPF) Scheme. A demand was raised by the employees for payment of gratuity and pension, etc., wherein a decision was taken on 29.09.1997 that the government had no objection to extending the benefit of pension, gratuity, leave travelling concession and Group Insurance Scheme to the employees appointed under the scheme, provided all financial expenses relating to these facilities would be borne by the internal sources of the Scheme. The government would not provide any type of financial assistance or grant-in-aid. A policy decision was also taken by the appointing authority on 12.11.1997 that all the employees and officers under the Scheme would

be covered by the service rules, government orders, regulations and bye-laws as applicable from time to time to the equivalent posts of the Cane Development Department. The government further communicated, with reference to the earlier communication dated 29.09.1997, that the facility of gratuity should be extended as per the rules and the facility of Contributory Provident Fund should be continued, reiterating the aspect of managing the expenses from the income of the Scheme. Thereafter, the Sugar Cane Commissioner passed an order clarifying the facilities available to the employees under the Scheme were like the government employees except for the facility of regularization, permanency and pension benefits. A restriction was also imposed upon the age of superannuation to remain at 58 years vide decision dated 29.06.2005. However, the Sugar Cane Commissioner raised the age of superannuation from 58 to 60 years for employees working under the Scheme.

5. One Mr. Vinod Kumar Goel preferred a Writ Petition before the Uttarakhand High Court claiming enhancement of his age of superannuation to 60 years in light of the decision of the government as referred to above. This claim was rejected, leading to filing an SLP before this Court, wherein vide order dated 16.04.2004

in Civil Appeal No.2511 of 2004 titled as *Vinod Kumar Goel vs. State of Uttaranchal*, it was held that he would be entitled to continue till the age of 60 years in light of the order of the Cane Commissioner dated 04.11.1997, which entitled the employees appointed under the Scheme to the same benefits as the government employees in the absence of any separate rules.

He, in the light of above claimed pension which was declined on the ground that he would not be entitled to the said benefit as he did not fulfil the required qualifying service for entitlement for payment of pension under the rules applicable. The employee was also held not entitled to gratuity. Shri Vinod Kumar Goel, challenged the said order by filing Writ Petition No. 348 of 2005 (*Vinod Kumar Goel Vs. State of Uttaranchal*), in the High Court, vide judgment dated 09.11.2011, the claim was partly allowed, entitling him to payment of gratuity in terms of the Payment of Gratuity Act, 1972. However, he was not held entitled to pension under the rules because of his having less service than the required qualifying service on the date of his completing the age of 60 years.

6. Shri Vinod Kumar Goel approached this Court where his claim was allowed vide order dated 10.01.2014 in Civil Appeal No.327 of 2014 titled as *Vinod Kumar Goel*

vs. *State of Uttarakhand & Ors.*, entitling him to grant of monthly pension apart from other retiral benefits.

7. Some of the respondents herein approached this Court by filing a Writ Petition under Article 32 of the Constitution of India challenging the denial of pension to the employees under the Scheme vide letter dated 13.11.2002 issued by the Cane Commissioner. This Writ Petition was withdrawn on 27.08.2012 with liberty to approach the High Court to raise all the points. It is in pursuance thereto that Writ Petition was preferred before the High Court, wherein, on the basis of the above-referred judgment in the Case of Vinod Kumar Goel of this Court relief was claimed for retiral benefits. The High Court accepted their claims holding them entitled to get the benefit of post-retiral dues including pension from the date of their retirement, treating their service to have been extended to the age of 60 years. It is this order dated 18.05.2016 passed by the High Court which is under challenge before this Court.
8. Learned Senior Counsel for the appellant has assailed the judgment primarily on the ground that the respondents have approached the Court after gross delay and that too after the judgment was passed by this Court, claiming parity with the said judgment. A distinction is also sought to be pleaded on the basis that in Vinod Kumar Goel case, the said employee had

been allocated to the State of Uttarakhand, which was carved out of the State of Uttar Pradesh (Appellant) in the year 2000 whereas the respondents continued with State of Uttar Pradesh. Counsel has also pressed into service the principle of estoppel, acquiescence and waiver, as according to the appellant they have already taken the benefit and advantage of the Contributory Provident Fund, having withdrawn the dues after their retirement, and, therefore, they cannot now be permitted to claim pension.

9. Learned Counsel further submitted that the respondents were temporary employees working under the Scheme and therefore would not be entitled to the benefit of pensionary benefits unless specifically held entitled to by the competent authority. What has been asserted is that the distinction has to be drawn between the temporary and the regular employees. Therefore, they cannot be held entitled to the same benefits as regular government employees since the respondents were working under the Scheme. He, on this basis, has prayed for setting aside the order impugned and dismissal of the Writ Petition preferred by the respondents.
10. On the other hand, learned Senior Counsel for the respondents has supported the judgment passed by the Hon'ble High Court, asserting that the case of the

respondents has rightly been held to be covered by the ratio of the judgment in Vinod Kumar Goel's case.

11. He thus contends that once the rules applicable to the Cane Development Department have been made applicable to the employees under the Scheme, they would be entitled to the same benefits provided they fulfil the requirements laid down thereunder.
12. Referring to the documents appended along with the Special Leave Petition, he has asserted that a conscious positive decision had been taken by the government to grant the benefits based on a proposal/recommendation of the Cane Commissioner vide letter dated 29.09.1997, qualifying it as limited to the extent of financial expenses being borne by internal sources. Emphasis has also been placed upon the decision dated 12.11.1997 whereby the employees under the scheme were to be covered by the service rules, government orders, regulations and bye-laws as applicable to the Cane Development Department. Once the said rules had been made applicable and a conscious decision had been taken by the government vide communication/decision dated 29.09.1997 with regard to the grant of all the benefits, the subsequent decision dated 13.11.2002 of the Sugarcane Commissioner would not sustain.

13. Senior Counsel has, with reference to the delay in approaching the Court, asserted that the date of retirement of the respondents may not be relevant as pension is a recurring benefit to which an employee is entitled every month. The claim would not extinguish merely because of the lapse of time. Referring to the chart appended along with the appeal here, the counsel asserts that there has been no inordinate delay on their part. Referring to the impugned judgment, he has pointed out that the High Court has itself mentioned that some of the petitioners had earlier approached the Court challenging the notice for their retirement at the age of 58 years by filing Writ Petitions wherein, in the light of interim orders, they were allowed to continue in service till they attained the age of 60 years. It has also been pointed out that the State Government vide notification dated 28.11.2001 amended Rule 56 of the Uttar Pradesh Fundamental Rules, enhancing the age of superannuation from 58 to 60 years. With these rules having been made applicable by the appellants and as held by this Court in *Vinod Kumar Goel's case* (supra), respondents would be entitled to the said benefit, which has been rightly granted to them. In light of the above, he prays for dismissal of the appeal.
14. Having considered the submissions made by the learned Senior Counsel for the parties, we find

ourselves in agreement with the principles which form the basis of the judgment of the High Court. The facts, as narrated above, make things amply clear. The respondents, although appointed under the Scheme, were governed by the fundamental statutory rules as per the order dated 12.11.1997 of the Competent Authority which aspect is further fortified in light of the decision dated 29.11.1997, which extends the benefit of retiral benefits etc. to the scheme employees, restricting it only to the management of finances under the Scheme itself.

15. This Court vide its earlier judgment in the case of *Vinod Kumar Goel* (supra) has dealt with this aspect and has categorically held that the employees appointed under the scheme would be governed by the Rules as applicable to the government employees as per the conscious decision of the government. The employees were also entitled to continue till 60 years of age, further entitling them to consequential benefits, which is apparent from the subsequent order dated 10.07.2014 passed by this Court in the second round when Vinod Kumar Goel was not granted the benefit of pension by the Government.
16. Dealing with the distinction which is being sought to be pleaded by the appellant with reference to the non-applicability of the judgment passed by this Court in

the case of *Vinod Kumar Goel* (supra) is that he was an employee of the State of Uttarakhand with State of Uttar Pradesh not being a party thereto the said judgment would not be binding upon the State. This plea of the appellant, at the first blush, may appear to be attractive, but the fact is that at the time of appointment, under the Scheme till the year 2000 when the State of Uttarakhand was carved out of the State of Uttar Pradesh, he continued to be governed by the rules and regulations framed by the State of Uttar Pradesh. There has been no changes brought about by the State of Uttarakhand in the said rules/regulations, other than as has been taken by the State of Uttar Pradesh. The decision, therefore, of this Court in *Vinod Kumar Goel*'s case along with the principles laid down therein would be applicable to the present case. Principle of estoppel, acquiescence and waiver as sought to be pressed into service by the appellants for the reason that the amount had been withdrawn of the Contributory Provident Fund by the respondents, again, would not be of any benefit to the appellant as the respondents had no option but to resort to the same. It is apparent that the respondents had at the very outset put forth their claim for pension which was declined by the appellants and that too either prior to retirement or prior to withdrawal of the fund under

Contributory Provident Fund Scheme. They were always and are still ready and willing to deposit the amount withdrawn as is required to be so contributed, therefore, the principles as sought to be pushed into service is without any basis.

17. The submission of the learned Senior Counsel for the appellant that switch over from one scheme to the other scheme is not permissible under the rules for which reference has been made and reliance placed on the judgment in ***Rajasthan Rajya Vidyut Nigam Limited vs. Dwarka Prasad Koolwal and Others***¹, would be of no avail on facts. When seen, this was a case where an option was given to the employee to switch over from the Contributory Provident Fund Scheme to the Pension Scheme, which option had not been exercised by him thus the said employee was held not entitled to the benefit of the Pension Scheme. Similarly, reliance placed on the judgment in ***Union of India and Others vs. M. K. Sarkar***², would also be of any benefit as it was held that when given a chance to change of option by the employee, if not exercised, would disentitle the employee for the claim.

These judgments are thus distinguishable both on facts and the issues involved herein. In the present case,

¹ 2015 (12) SCC 51

² 2010, (2) SCC 59

there was no option given for switchover to the respondents rather it was asserted that they were not entitled to pension which, as held above, has been found to be unsustainable. Further, there has been claims for pension etc. put forth by them within reasonable time.

18. As regards the objection of the appellants with regard to the delay on the part of the respondents in approaching the Court based on reliance placed on the judgments in ***U.P. Jal Nigam and Another vs. Jaswant Singh and Another***³ and ***Sarva Shramik Sangh vs. Indian Oil Corporation Limited and Others***⁴ is concerned those would not be of much help since in those cases, the claims were put forth after an inordinate unexplained delay, whereas in the present case, the respondents had either retired subsequent to date of decision while others had approached the High Court and obtained interim benefit of continuing in service till the age of 60 years.
19. This Court in various judgments has clearly held and settled that pension is not a charity, or a bounty, and an employee is entitled to receive his pension. As a matter of principle, belated service-related claims need

³ (2006) 11 SCC 464

⁴ (2009) 11 SCC 609

to be rejected on the ground of delay and laches. However, where the claim relates to a continuing wrong, which does not affect the rights of third parties, equities can be balanced by restricting the arrears for the entitlement which a claimant is held to be eligible for. Normally, the period of three years prior to the date of filing of the Writ Petition in the High Court for restricting the consequential relief has been resorted to regarding disbursal of arrears, which is justified. In the present case also, therefore, the benefit of arrears of pension can be restricted to three years prior to the date of filing of the Writ Petition.

20. In light of the above, the appeal stands dismissed except for holding the respondents entitled to arrears of pension for a period of three years prior to the date of the filing of their Writ Petition or the date of attaining the age 60 years whichever is earlier for the relief as granted by the High Court. As regards the benefits which have been disbursed to the respondents under the Contributory Pension Scheme, the appellants would be entitled to deduct the said amount from the arrears of pension payable to the respondents. This exercise shall be carried out within a period of one month. In case there is still some amount due to be paid by the respondents, the said amount shall be conveyed to the respondents within a period of two weeks after

the expiry of the initial one month as granted, which shall thereafter be deposited by the respondents within a period of two weeks. On doing so, the arrears and/or pension as per entitlement would be paid within thirty days.

21. There shall be no order as to costs.

22. Pending applications, if any, also stand disposed of.

.....J.
[ABHAY S. OKA]

.....J.
[AUGUSTINE GEORGE MASIH]

**NEW DELHI;
MARCH 20, 2025**