
(2002) 03 MP CK 0086

In the Madhya Pradesh High Court

Case No : Writ Petition No. 857, 926, 4813, 4814, 6005, 6245, and 5710 of 2001

N.L. Mandhan and others

APPELLANT

Vs

M.P. State Electricity Board and another

RESPONDENT

Date of Decision : 05-03-2002

Acts Referred:

Electricity (Supply) Act, 1948 — Section 79, 79(c)

Citation : (2003) 1 MPJR 53 : (2002) 4 MPLJ 429

Hon'ble Judges : U.N. Singh, J;Dipak Misra, J

Bench : Division Bench

Advocate : Sanjay Agrawal, R.N. Singh, with Arpan Pawar, for the Appellant; V. K. Tankha, with H.K. Upadhyay, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

Common questions of law being involved in this batch of writ petitions, it was heard analogously and is hereby disposed of by this singular order. For the sake of clarity and convenience we would proceed to adumbrate the facts in W.P. No. 6005/2001.

The petitioners, who were the employees of the M.P. State Electricity Board, accepted voluntary retirement from the M.P. Electricity Board (in short "the Board") on various dates. A copy of the order of retirement in respect of four persons has been brought on record as Annexure P/1. The petitioners opred for voluntary retirement in order to discharge their liability towards their family and to provide better future to their offsprings. At the time of settlement of their case relating to grant of pension, their application for commutation was considered in accordance with the rules in vogue, and they were allowed commutation of pension in lump sum to the tune of 40% of the pension. In the order granting pension it was mentioned that 40% is the commuted value of the pensior and it would be payable only after the drawal of the first pension. It is setforth in the

petition that though the petitioners were allowed to retire voluntarily the commutation value of the pension was withheld for the reasons best known to the respondents. The repeated approach to the authorities ended in sisyphian labour. When the petitioners were planning to have a better future, like a bolt from the blue they were served with the orders that there would be amended commuted pension in terms of the Board's notification dated 9-3-2001 by which the commutation of the pension has been drastically reduced.

According to the writ petitioners the deduction of commutation of pension in pursuance of the notification dated 9-3-2001 is arbitrary and illegal inasmuch as the said notification has been given retrospective effect, though law does not envisage such allowance. It is pleaded in the petition that the State Government has framed a set of rules regarding commutation of pension i.e. M.P. Civil Services (Commutation of Pension) Rules, 1996 (for brevity "the Rules") and the said rules were notified on 21-8-1996 and were published in the official gazette on 13-9-1996. It is put forth that the Board in exercise of powers conferred on it u/s 79 of the Electricity (Supply) Act, 1948 (for brevity "the Act") adopted the rules for its employees vide order dated 30-6-1998. As the State Government by notification dated 7-2-2000 amended the provisions contained in the rules and the schedule was drastically amended and the number of years in respect of which the pension could be commuted was significantly reduced. It has been averred that the Pension of Commutation Rules, 1976 was withdrawn on 7-2-2000 and the new rules were adopted by the notification issued by the State Government on 26-12-2000, Annexure P/4. While the matter stood thus, the Board issued notification on 9-3-2000, Annexure P/5 adopting the notification issued on 7-2-2000 with retrospective effect from 18-2-2000. This order has been notified in the official gazette as envisaged under clause (c) of section 79 of the Act. It is urged in the petition that Annexure P/5 is illegal, irrational, unreasonable and arbitrary inasmuch as by virtue of this notification the vested right of the pensioners has been curtailed. It is also highlighted that the persons who had availed the retirement on the voluntary retirement scheme, were tempted to so avail because of the benefits conferred by the Board with regard to commutation value of pension. It is also put forth that there are 40 employees who have already been given the benefit of this commutation value as they opted for voluntary retirement but the same has been denied to them. With these averments prayer has been made to declare that the notification dated 9-3-2001 is ultra vires, being irrational and unreasonable inasmuch as it has been made retrospectively applicable as a consequence of which the vested or accrued rights of the petitioners have been totally affected and smothered.

A return has been filed by the Board contending, inter alia, that u/s 79(c) of the Act the Board is authorised to take decisions regarding the duties of officers and other employees and their salaries, allowances and other conditions of service. In exercise of powers conferred under clause (c) of section 79 of the Act the Board decided to substitute M.P. Civil Service (Pension) Rules, 1976 for the M.P. New Pension Rules, 1951. These rules were made applicable to all employees in the

Board's service as on 1-6-1976 and also to those who entered the Board's service thereafter. It is put forth that the said decision was notified on 3-4-1978 but the same was not published in the official gazette as it was not necessary under the Act at that point of time. The Board vide order dated 30-6-1998 decided that the employees/officers shall be allowed commutation to the extent of 40% of the basic pay w.e.f. 1-1-1996 instead of existing limit of 1/3rd of their basic pension. It was also decided that in such cases the commuted portion shall be restored after 15 years from the actual date of commutation. It is set forth that the notification dated 30-6-1998 was not published in the official gazette and hence, requirement u/s 79(c) of the Act was not complied with. Thus, the said notification does not confer any legal right on any of the petitioners. Thereafter, as has been pleaded, the Board vide order No. 01/13/3395/55 dated 26-12-2000 decided to adopt the orders of the State Government contained in Finance Department notification No. B-25/13/96/PWC-IV dated 21-8-1996 and also its amendment from time to time including the notification dated 7-2-2000. This order dated 26-12-2000 was effective from the date of issuance of the order. It has been put forth that the order dated 26-12-2000 was also not notified in the official gazette. As the aforesaid order was not notified it was so notified in the official gazette on 9-3-2001 with retrospective effect from 18-2-2000. It was so done as the State had brought a notification on 7-2-2000 which was to come into effect from date of publication in the official gazette which eventually took place on 18-2-2000. It is urged in the petition that a notification can be given retrospective effect and no right can be claimed by the petitioners inasmuch as the benefits had not accrued in their favour because of any rules in vogue.

At this juncture, we feel it apposite to refer to the factual matrix in W.P. No. 4813/2001. It is not disputed that the petitioner No. 1, B.K. Bathre, attained the age of superannuation on 30-6-2000. It is not disputed at the Bar that all other persons had availed the voluntary retirement. We have referred to this aspect in this case as it would be relevant for what we are going to lay down at a later stage.

We have heard Mr. R.N. Singh, learned Senior Counsel along with Mr. Arpan Pawar, for the petitioners and Mr. V.K. Tankha, learned Senior Counsel along with Mr. H.K. Upadhyay, for the Board.

Mr. Singh has raised threefold contentions, namely (i) the officers who had been superannuated prior to the notification contained in Annexure P/5 would be governed by the set of rules that was in force at the time of superannuation and, therefore, the notification issued vide Annexure P/5, cannot be given retrospective effect and as far as the retrospective effect is concerned, the same is unreasonable, irrational and is hit by conscience of Article 14 of the Constitution; (ii) the petitioners who had availed the voluntary retirement scheme, they were tempted to avail the same because of orders passed by the Board wherein a retired employee could get commuted value of the pension by his retirement and that being a promise the Board cannot be allowed to resile

from it, even if in the stricto sensu, the rules at the time of ordinary/normal superannuation may not be applicable but the letter circular did indubitably imbibe a sense of hope and aspiration in the mind of the petitioners to opt for voluntary retirement and the Board accepted the voluntary retirement without any compunction or hesitation and thereafter cannot plea such a chimerical ruse; and (iii) the Board cannot be permitted to create a de facto discrimination as it has already paid the commutation value at the rate of 40% on the bedrock of its letter circular to the other employees retract to confer the said privilege on the petitioner by introducing a new paradigm.

Mr. V.K. Tankha, learned Senior Counsel for the Board, per contra, submitted that a person who had attained the age of superannuation has to be governed by the amended notification as the law is well settled that a notification be given retrospective effect. Learned Senior Counsel has submitted that a notification cannot throttle or annihilate the vested right or accrued right but in the instant case the said right had not been concretized inasmuch as the employees had not received the amount in question. It is urged by him that assuming that the rules which are in vogue at the time of retirement would be applicable, the M.P. Civil Services (Pension) Rules, 1976 which was adopted by the Board would still be the law till the Annexure P/5 came to govern the field and as the employee concerned had attained the age of superannuation prior to that date he has to be governed by that rule and cannot claim a better right for the unembellished reasons, the orders passed by the Board were not notified in the official gazette u/s 79(c) of the Act, and therefore, cannot be regarded as the law. It is also put forth by him that in absence of the rules the Board can pass the resolution but when the rules are in existence governing the field the Board could not have passed such a resolution without getting it published in the official gazette. Even if it is there, submits Mr. Tankha, it does not have the force of law. As far as the voluntary retirement is concerned, the learned Senior Counsel though combated the submission of Mr. Singh, learned Senior Counsel and endeavoured hard to raise a superstructure that in absence of benefit being conferred as an actual fact, the notification contained in annexure P/5 would be ipse dixit become applicable did not dispute the fact that certain employees opted for voluntary retirement, have been given the benefit by virtue of letter circular.

Now, we shall deal with the case of the persons who retired by efflux of time. Submission of Mr. Tankha is that the Annexure P/5 would apply to his case, as the notification has been applied with retrospective effect. On a perusal of the notification it becomes quite vivid that notification dated 9-3-2001 stipulates that it would come into effect from 18-2-2000. In this context we need not detain ourselves for longer inasmuch as a Constitution Bench of the Apex Court in the case of *Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others*, while dealing with the case of superannuation and applicability rules in retroactive manner after referring to catena of decisions in paragraphs No. 32 and 35 held as under:

"32. In *Salabuddin Mohamed Yunus Vs. State of Andhra Pradesh*, , the appellant was employed in the service of the former Indian State of Hyderabad prior to coming into force of the Constitution of India. On coming into force of the Constitution the appellant continued in the service of that State till he retired from service on January 21, 1956. The appellant claimed that he was entitled to be paid the salary of High Court Judge from October 1, 1947 and also claimed that he was entitled to receive pension of Rs. 1000/- a month in the Government of India currency, being the maximum pension admissible under the rules. The said claim of the appellant was negatived by the Government. He filed a Writ Petition in the High Court of Andhra Pradesh. During the pendency of the said Writ Petition relevant rule was amended by notification dated February 3, 1971 with retrospective effect from October 1, 1954 and the expression "Rs. 1000 a month" in clause (b) of sub-rule (1) of Rule 299 was substituted by the expression "Rs. 857.15 a month". This amendment was made in exercise of the power conferred by the Proviso to Article 309 read with Article 313 of the Constitution. The said amendment was struck down by this Court as invalid and inoperative on the ground that it was violative of Articles 31(1) and 19(1)(f) of the Constitution. Relying upon the decision in *Deokinandan Prasad Vs. The State of Bihar and Others*, , it was held:

"The fundamental right, to receive pension according to the rules in force on the date of his retirement accrued to the appellant when he retired from service. By making a retrospective amendment to the said Rule 299(1)(b) more than fifteen years after that right had accrued to him, what was done was to take away the appellant's right to receive pension according to the rules in force at the date of his retirement: or in any event to curtail and abridge that right. To that extent, the said amendment was void." (pp. 938-939) (of SCR): (at pp. 1909 and 1910 of AIR).

The learned Additional Solicitor General has, however, submitted that the impugned amendments cannot be regarded as arbitrary for the reason that by the reduction of the maximum limit in respect of Running Allowance from 75% to 45% for the period January 1, 1973 to March 31, 1974 (1979) and to 55% from April 1, 1979 onwards, the total amount of pension payable to the employees has not been reduced. The submission of the learned Additional Solicitor General is that since the pay scales had been revised under the 1973 Rules with effect from January 1, 1973, the maximum limit of 45% or 55% of the Running Allowance will have to be calculated on the basis of revised pay scales while earlier the maximum limit of 75% of Running Allowance will have to be calculated on the basis of the revised pay scales and, therefore, it cannot be said that there has been any reduction in the amount of pension payable to the respondent as a result of the impugned amendments in Rule 2544 and it cannot be said that their rights have been prejudicially affected in any manner. We are unable to agree. As indicated earlier, Rule 2301 of the Indian Railway Establishment Code prescribes in express terms that a pensionable railway servant's claim to pension is regulated by the rules in force at the time when he resigns or discharged from

the service of Government. The respondents who retired after January 1, 1973 but before December 5, 1988 were, therefore, entitled to have their pension computed on the basis of Rule 2544 as it stood on the date of their retirement. Under Rule 2544, as it stood prior to amendment by the impugned notifications, pension was required to be computed by taking into account the revised pay scales as per the 1973 Rules and the average emoluments were required to be calculated on the basis of the maximum limit of Running Allowance at 75% of the other emoluments, including the pay as per the revised pay scales under the 1973 Rules. Merely because the respondents were not paid their pension on that basis in view of the orders of the Railway Board dated 21, 1974, March 22, 1976 and June 23, 1976, would not mean that the pension payable to them was not required to be computed in accordance with Rule 2544 as it stood on the date of their retirement. Once it is held that pension payable to such employees had to be computed in accordance with Rule 2544 as it stood on the date of their retirement, it is obvious that as a result of the amendments which have been introduced in Rule 2544 by the impugned notifications dated December 5, 1988 the pension that would be payable would be less than the amount that would have been payable as per Rule 2544 as it stood on the date of retirement. The Full Bench of the Tribunal has, in our opinion, rightly taken the view that the amendments that were made in Rule 2544 by the impugned notifications dated December 5, 1988, to the extent the said amendments have been given retrospective effect so as to reduce the maximum limit from 75% to 45% in respect of the period from January 1, 1973 to March 31, 1979 and reduce it to 55% in respect of the period from April 1, 1979, are unreasonable and arbitrary and are violative of the rights guaranteed under Articles 14 and 16 of the Constitution."

The law as has been announced in the aforesaid case there remains no trace of doubt that the pension has to be computed in accordance with the rules that was in vogue at the time of retirement. This being the position of law, we are of the considered opinion, the notification dated 9-3-2001 cannot be held retrospectively applicable. We may hasten to add, Mr. Singh, learned Senior Counsel has referred to certain other decisions but in our considered view, the same are not directly in issue and relate to different legislations and other spectrum and hence, we refrain from referring to them. Thus, we hereby declare that notification dated 9-3-2001 cannot be held applicable with retrospective effect from 18-2-2000 but it will have prospective effect.

Having so held we are obligated to answer whether the petitioner, B.P. Bathre would get the benefit of 40% commutation because of the aforesaid declaration. Mr. Tankha, learned Senior Counsel submitted that even if the Annexure P/5 is not made retrospectively applicable in that event, the rules at the time of superannuation, a normal one, would be governed by the set of rules which was in vogue at the time of superannuation. Submits Mr. Tankha that the Board had adopted the 1976 Rules of the State Government. The State Government repealed the same later on. But such a repeal would not affect the adoption by

the Board inasmuch as such an adoption was by way of incorporation and not by reference. It is not disputed at the Bar that the said rule was adopted by the incorporation. In this context we may profitably refer to the decision rendered in the case of Mahindra and Mahindra Ltd vs. Union of India and another, AIR 1979 SC 798 wherein their Lordships have expressed as under:

"9. We have no doubt that section 55 is an instance of legislation by incorporation and not legislation by reference. section 55 provides for an appeal to this Court on "one or more of the grounds specified in section 100". It is obvious that the legislature did not want to confer an unlimited right of appeal, but wanted to restrict it and turning to section 199, it found that the grounds there set out were appropriate for restricting the right of appeal and hence it incorporated them in section 55. The right of appeal was deafly intended to be limited to the grounds setout in the then existing section 100. Those were the grounds which were before the Legislature and to which the Legislature could have applied its mind and or is reasonable to assume that it was with reference to those specific and known grounds that the Legislature intended to restrict the right of appeal. The Legislature could never have intended to limit the right of appeal to any ground or grounds which might from time to time find place in section 100 without knowing what those grounds were. The grounds specified in section 100 might be changed from time to time having regard to the legislature policy relating to second appeals and it is difficult to see any valid reason why the Legislature should have thought it necessary that these changes should also be reflected in section 55 which deals with the right of appeal in a totally different context. We fail to appreciate what relevance the legislative policy in regard to second appeals has to the right of appeal underlinked or yoked to section 100 and whatever changes takes place in section 100 must be automatically read into section 55. It must be remembered that the Act is a self-contained Code dealing with the monopolies and restrictive trade practices and it is not possible to believe that the Legislature could have made the right of appeal under such a code dependent on the vicissitudes through which a section in another statute might pass from time to time. The scope and ambit of the appeal could not have been intended to fluctuate or vary with every change in the grounds set out in section 100. Apart from the absence of any rational justification for doing so, such an indissoluble linking of section 55 with section 100 might be repealed altogether by the Legislature - a situation which cannot be regarded as wholly thinkable. If the construction contended for on behalf of the respondents were accepted, section 55 would in such a case be reduced to futility and the right of appeal would be wholly gone, because then there would be no grounds on which an appeal could lie. Could such a consequence ever have been contemplated by the Legislature? The Legislature clearly intended that there should be a right of appeal though on limited grounds, and it would be absurd to place on the language of section 55 an interpretation which might, in a given situation, result in denial of the right of appeal altogether and thus defeat the plair object and purpose of the section. We must, therefore, hold that on

proper interpretation the grounds specified in the then existing section 100 were incorporated in section 55 and the substitution of the new section 100 did not affect or restrict the grounds as incorporated and since present appeal admittedly raises questions of law, it is clearly maintainable u/s 55"

In the case of Rajasthan State Road Transport Corporation, Jaipur vs. Smt. Poonam Pahwa and others, AIR 1997 SC 2951 the following view was expressed:

"25. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the appellant and by Dr. Dhavan, the learned senior counsel appearing as amicus curiae in this appeal, it appears to us that the State of Haryana has adopted the Punjab Motor Accidents Claims Tribunals Rules 1964 by substituting the word "Haryana" for Punjab in Rule 1 Clause (b) and in Rule 2 Clause (b). Such adoption in the Punjab Motor Accidents Claims Tribunal, 1964 was made on January 20, 1972. In the Punjab Motor Accidents Claims Tribunal Rules, 1964, amendment was effected on June 21, 1968 by inserting Order XXI of the CPC in Rule 20 framed under Motor Vehicles Act, 1939. In our view, Dr. Dhavan is justified in his submission that when Haryana has adopted the Punjab Motor Accidents Rules in 1972, it must be held that it stood on the date of adoption, namely, January 20, 1972. Order XXI of the CPC has been expressly made applicable in Punjab Motor Accidents Claims Tribunal Rules by amending the Punjab Rules in June 1968 which was published in Gazette on July 12, 1968. Therefore, by adopting the Motor Accidents Claims Tribunal Rules, 1964 in 1972, it should be held that Haryana has adopted the Punjab Motor Accidents Claims Tribunal Rules, 1964 as stood amended on the date of adoption. In this connection, reference may be made to the decision of this Court in Mahindra and Mahindra vs. Union of India, AIR 1979 SC 798 and Bolani Ores Ltd., . In Mahindra and Mahindra's case, it has been held that if there is mere reference to a provision of statute in another without incorporation, then unless a different intention clearly appears, section 8(1) of General Clauses Act would apply and the reference would be construed as a reference to the provision as may be in force from time to time in the former statute. But if a provision of one statute is incorporated in another, any subsequent amendment in the former statute or even its total repeal would not affect the provision as incorporated in the latter statute."

From the aforesaid it is quite clear that once there is an incorporation the rules do remain in vogue qua the Board. It is put forth by Mr. Tankha that the orders which were issued in the year 1998 by increasing the commutation value of the pension, cannot be regarded as law to confer a benefit of vested right inasmuch as that cannot be termed or regarded as a set of rules governing the field at the time of superannuation. It is not disputed by Mr. Singh that benefit was to be conferred because of the orders passed by the Board on 30-6-1998. In this context we may profitably refer to the section 79 of the Act. The said provision reads as under:

"79. Power to make Regulations.-- The Board may, by notification in the Official

Gazette, make regulations not inconsistent with this Act and the rules made thereunder to provide for all or any of the following matters, namely:

- (a) the administration of the funds and other property of the Board, and the maintenance of its accounts.
- (b) the summoning and holding of meetings of the Board, the times and places at which such meetings shall be held, the conduct of business thereat and the number of members necessary to constitute a quorum;
- (c) the duties of [officers and other employees] of the Board, and their salaries, allowances and other conditions of service;
- (d) all matters necessary or expedient for regulating the operations of the Board u/s 20;
- (e) the making of advances to licensees by the Board u/s 23 and the manner of repayment of such advances;
- (f) the making of contributions by the Board u/s 24;
- (g) the procedure to be followed by the Board in inviting, considering and accepting tenders;
- (h) principles governing the fixing of Grid Tariffs;
- (i) principles governing the making of arrangements with licensees u/s 47;
- (j) principles governing the supply of electricity by the Board to persons other than licensees u/s 49;
- [(jj) expending sum not included in statement submitted under sub-section (1) or sub-section (5) of section 61, under sub-section (2) of section 62;]
- (k) any other matter arising out of the Board's functions under this Act for which it is necessary or expedient to make regulations:

Provided that Regulations under clauses [(a), (d) and (jj)] shall be made only with the previous approval of the State Government and Regulations under clauses (h) and (i) shall be made with the concurrence of the Authority."

It is not disputed that retirement is a condition of service and, therefore, the orders which have been issued require to be notified u/s 79(c) of the Act. As the same has not been notified, we are of the considered view, the same cannot be conferred the status of law. It is well settled in law that if certain action has to be done in certain manner the same has to be done in the manner prescribed or not at all. This is more requisite when a question of making a law arises. Our view finds support from the decision rendered in the case of Myurdhwaj Cooperative Group Housing Society Ltd. Vs. The Presiding Officer, Delhi Cooperative Tribunal and Others, wherein the Apex Court referred to the principle that when a statute provides a thing to be done in a manner it has to be done in that manner alone

and not in any other manner. As in the present case same has not been done, we have no hesitation in holding that the such an order cannot be equated with the statutory law.

Now the that question arises for determination what would be applicable to the persons/employees who were superannuated by efflux of time. Be it noted, superannuation comes after a person attains a particular age as provided under the rules. As has been laid down in the case of C.R. Rangadhamaiah (supra) the said person will get the benefit of the rules which was in vogue or force at the time of his retirement. As we have already held that the orders passed by the Board do not have the authority of law the only provision that would have sacrosanctity of law, is the 1996 Rules. Hence, we direct the petitioner No. 1, B.K. Birthary, in W.P. No. 4813/2001 and his likes would be given pensionary benefits including the commutation value as per 1976 Rules.

The second facet that requires to be considered in praesenti is whether the employees who have availed voluntary retirement would be treated at par with B.K. Birthary or they have a different case to portray. It is submitted by Mr. Singh because of the orders passed by the Board in the year 1998 enhancing the quantum of commutation the employees fostered a hortatory expectation that sanguine hope, and homespun aspiration, which is a synonymous with human optimism and opted for voluntary retirement. The Board at that juncture allowed them to retire voluntarily because the Board did not want so many employees in its pay roll. Possibly the Board had realized in its financial crunch, which is often magnified before the Court. We may hasten to add, Mr. Tankha, learned Senior Counsel for the Board submitted that a commutation value was increased keeping in view the recommendation of the Fifth Pay Commission after it was adopted by the Union of India. Be that as it may, the fact remains the Board accepted the voluntary retirement, proposals submitted by its employees. True it is, the Board had not floated a voluntary scheme, but the expose of facts clearly indicate the Board did not have slightest hesitation or temporizing to extend the golden hand to accept the offer given by the employees. Thus, it is a vicarious golden hand-sake. It has been said that one cannot shake hand with a clenched fist. It cannot be forgotten, that the employees who had sought for voluntary retirement had many years to serve but to have the commutation value of the pension, they gave their offer for voluntary retirement. At that juncture, this privilege was available. We may not be understood to have said that "order" passed by the Board on 30-6-1998 though not law but applies as law to the employees who had opted for voluntary retirement. In fact, we are only inclined to say that the order was in vogue many employees felt that the Board's order was a sanguine one and was not a pinchbeck. If we binocular the entire factual scenario qua the employees who had opted for voluntary retirement, we are of the considered view, the order would stand in a different footing vis-a-vis the employee who attained the age of superannuation in due course of time. We may at this juncture note that the Board had extended the benefit to 40 persons who opted for voluntary retirement. On a query being made on what basis or

foundation the aforesaid benefit was conferred and the petitioners were denied or deprived, the learned Senior Counsel for the Board only could say that principles of negative equality is not a part of Article 14 of the Constitution. While appreciating the aforesaid proposition of law we cannot shut our eyes what had actually taken place. Considering the obtaining factual matrix as a composite whole, we are inclined to direct the Board to pay the commutation value as per order dated 30-6-1998 to the voluntary retirees, namely, the petitioners who are before this Court within a period of three months from the date of receipt of the order passed today.

We will be failing in our duty if we do not appreciate the submission of Mr. Tankha that this Court has declared the retroactivity of the notification as ultra vires but that will be prospectively applicable but the order dated 26-12- 2000 whereby the decision has been taken to adopt the order passed by the M.P. State Government, Financial Department Notification No. B-25/13/96/PWC-IV, dated 21-8-1996 and its amendment from time to time vide notification No. F-25- B-98/ PWC-IV dated 7-2-2002 regarding commutation of pension would be applicable to the employees/officers of the Board. It is fairly conceded by Mr. Tankha that the notification dated 26-12-2000 does not have the status of law as it had not been published in the official gazette. However, proponent Mr. Tankha that after this order has come into existence if an employee or officer has requested for voluntary retirement, he cannot claim commutation on the basis of the earlier order issued on 30-6-1998. We find substantial force in the aforesaid submission for the simple reason that a person who had opted for the voluntary retirement on the basis of the order dated 30-6-1998 would stand in a different class whereas the persons who have opted for the voluntary retirement on or after 26-12-2000 shall fit into a different class altogether. It is perceivable that there is intelligible differentia between the two categories. Hence, we unhesitatingly hold that employees/officers who have sought for voluntary retirement after 26-12-2000, will be governed by the said order and not by the earlier order. We say so because by the said time the employees had ample opportunities to know what is the order of the Board and there is no room for playing possum. He who plays possum not only invites the wrath or majesty of law but loses his right in equity.

Consequently, the notification No. 01 -13/3395/13 dated 9-3-2001 as far as its retroactive is concerned, is declared ultra vires. It would be: treated to be prospective. The petitioners, who had voluntarily retired, will reap the benefits as have been stated hereinbefore and the employees/officers who had attained the normal age of superannuation will reap the benefit as per 1976 Rules and such subsequent law governing the field at the time of superannuation.

Ex consequenti, the writ petitions are allowed to the extent indicated hereinabove. However, in the peculiar facts and circumstances of the case, there shall be no order as to costs.

Writ petitions allowed.