(2015) 07 UK CK 0010

In the Uttarakhand High Court

Case No : Writ Petition (S/S) Nos. 1234 of 2013, 1086 of 2009, 1211 of 2013, 1210 of 2013, 1209 of 2013, 1212 of 2013, 1224 of 2013, 1225 of 2013, 1226 of 2013, 1227 of 2013, 1233 of 2013, 1232 of 2013, 1231 of 2013, 1230 of 2013, 1229 of 2013, 1228 of 2013, 1254 o

Pandev Bhatt and Others APPELLANT

Vs

State of Uttarakhand and Others RESPONDENT

Date of Decision : 23-07-2015

Acts Referred:

Road Transport Corporations Act, 1950 — Section 3

Citation : (2015) 07 UK CK 0010

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Kurban Ali, M.K. Chand, B.D. Pandey, M.S. Bhandari, H.C. Pathak, Yogesh Pacholia, Shakti Singh, Syed Nadim, Rakesh Kumar Negi, Naveet Kaushik, A.D. Tripathi and M.C. Pant, for the Appellant; T.P.S. Takuli, Brief Holder, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J—In the above bunch of writ petitions, the petitioners claim pension after their retirement from a Government Transport Corporation known as "Uttarakhand Road Transport Corporation Ltd." (from hereinafter referred to as "State Corporation"). This is being denied to them by the Corporation, on the ground that none of the petitioners were working on a pensionable post. As respondents before this Court is also UPSRTC (U.P. State Road Transport Corporation), the earlier employer of the petitioners. After the creation of the new State of Uttarakhand on 09.11.2000, Uttarakhand State created its own Corporation and the services of the petitioners (who were earlier working in the UPSRTC), were transferred/merged in the Uttarakhand State Corporation.

2. There has been a gamut of litigations by the employees of the State Corporation regarding their pension both before the Allahabad High Court as well as before this Court. It is also true that there are some conflicting judgments in

this regard. The matter had also reached the Hon''ble Apex Court at certain point of time, which shall also be discussed. All the petitioners before this Court had reached their age of superannuation and retired from the State Corporation much earlier to their filing of the present writ petitions. It is an admitted fact that these writ petitions were filed highly belatedly before this Court. The delay ranges to 10 years or more in some cases. Apart from the merit of the case the learned counsel for the two State Corporations i.e. Uttar Pradesh State Corporation and Uttarakhand State Corporation, have vehemently opposed these writ petitions, inter alia, on the ground of delay and submit that these writ petitions be dismissed on grounds of latches alone.

3. There are various submissions of the learned counsels for the petitioners as are the objections to it by respondents, but first of all the petitioners rely upon a case, namely, Mirza Atahar Beg v. State of UP & others (Writ Petition No. 7728 1996 S/S), which was allowed by a learned Single Judge of the Allahabad High Court on 25.08.2010 and the Special Appeal of UPSRTC against it was also dismissed. UPSRTC thereafter went in SLP before the Hon''ble Apex Court but this Court has been informed that on ground of delay SLP was dismissed. A very heavy reliance has thus been placed by the petitioners on the said judgment of Mirza Atahar Beg, and it has been argued that the present matter now stands covered by Mirza Atahar Beg case, as the position in all the present petitions is absolutely similar to the one in Mirza Atahar Beg case. The petitioners are hence liable to be given the same benefits as the judgment had reached a finality. Here it must be stated that in Mirza Atahar Beg''s case the petitioners were also the retired employees of UPSRTC and were denied pension. Later they had filed the writ petitions where their claim was upheld.

4. The learned counsel for the State Corporation would argue that the present cases are different and hence the ratio in the case of Mirza Atahar Beg cannot be applied in these cases. Secondly, even if the facts are similar the same benefit cannot be given to the petitioners as they remained a fence-sitter through out. Mirza Atahar Beg and others had approach the Hon''ble High Court as long back as the year 1996, and only when the judgment had come in their favour, the present petitioners have woken up and have filed the present petitions. They are not liable to be given any benefit. Their petition is highly belated. It has also been argued that many essential factual as well as legal aspects were also not considered by the learned Judge in Mirza Atahar Beg case. Hence the judgment is also "per incuriam ". As far as the order of the Hon''ble Apex Court in the said judgment is concerned it is argued that the Hon''ble Apex Court has not rejected the appeal on its merit. It has simply been "dismissed", where no reasons have been assigned and therefore there is no application of the doctrine of merger. In other words Mirza Atahar Beg will not give any benefit to the petitioners.

5. A brief background of the present case would be in order.

6. Immediately after independence the Provincial Government of the United Province took a decision to provide transport facilities to public. It hence created

a separate, though temporary department, known as Uttar Pradesh Government Roadways. Since there were no service condition for employees by UP Government Roadways a Government Order No. 3014D/XXX-135/59 dated Sept. 16, 1960 was passed, which is reproduced as below:--

"G.O. No. 3014 D/XXX-135/59 dated Sept. 16, 1960 Subject: Terms and conditions of service of temporary employees in the U.P. Roadways-Revisions of.

I am directed to say that the question of revising the terms and conditions of service of the Roadways employee, which is a nationalized commercial undertaking and has to work in conditions different from those prevailing in regular government offices, has been under the consideration of Government for some time past.

The passenger and goods services have to run irrespective of the fact whether it is a Sunday or a festival. The schedule of passenger services run by the State Undertaking cannot be altered off an on. In order to keep the Roadways services going the maintenance and repairs of vehicles has to be attend to even at odd hours at the workshops. At present the conditions of service of the employees of the U.P. Government Roadways and the Central Workshop, Kanpur are governed by the various rules and standing orders of Government applicable to other temporary government servants under the rule making powers of the Governor. In view of the special service conditions of employees of the Roadways it seems necessary to evolve a new set of service conditions for its employees which may be compatible with the nature of work and functions of the organization. Accordingly, in super session of all previous orders on the subject, the Governor has been pleased to pass the following orders prescribed revised terms and conditions of service of temporary employees of the U.P. Roadways including those detailed in para 2 below. The revised terms and conditions of service shall be applicable to all future entrants in the Roadways organization and shall be enforced in the manner mentioned hereinafter in the case of temporary employee including those on the work charge strength and paid on monthly basis.

(1) All temporary employees except those referred to in para 2 shall get one day''s rest in every period of seven days in accordance with the rules to be framed by Government. In case the employees is deprived of any of the days or rest, he shall be allowed within the same or following month compensation holidays of equal number of the days of rest so lost.

(2) They shall be entitled to get one days paid holidays for every 20 days of work performed by them during the previous calendar year, subject to the condition that the employee has worked for a period of 240 days or more during the previous calendar year. In case the employees is not able to avail of full or part of the leave admissible to him during the calendar year, it will be carried over to the following year, subject to a maximum of 30 days.

(3) They shall got five days festival holidays in a calendar year as prescribed by Government and subject to the rules to be framed for the purposes.

(4) They shall be paid extra wages at the rate of twice of ordinary rate of wages in respect of work performed by them beyond the prescribed hours of work.

(5) Their services are liable to termination on one month''s notice on either side, or one month''s pay in lieu thereof.

(6) In other respect the conditions of service will remain the same as at present.

2. The revised terms and conditions of services mentioned in para 1 above shall not apply to the following category of employees:

(a) All employees working in the offices establishment of the Asstt. General Manager, General Manager, Service Manager, Chief Mechanical Engineer, Roadways Central Workshop, Kanpur and the Head Quarter Office of the Transport Commissioner.

(b) Supervisory staff of the rank of Junior Station Incharge and above on the traffic side;

(c) Technical staff of the rank of Junior Foreman and above on the engineer side;

The above three categories of Roadways staff will continue to be treated as regular government servants and will be entitled to the benefits admissible to any other government servant of the same category.

3. The Roadways and Central Workshop employees to whom the revised service rules are being made applicable shall be entitled to the provident fund benefits according to the provisions of the Employees Provident Fund Act. For this necessary orders have already been issued separately in G.O. No. 1488-D/XXX 2198/59 dated July, 29, 1960. Immediate step may please be taken for the implementation of the orders issued in the above G.O. The employees governed by new terms and conditions of service will continue to get facilities for medical treatment so far enjoyed by them. All future entrants shall also be entitled to facilities for medical treatment admissible to Government servants. The canteen and rest house facilities as may be prescribed by government shall also be made available to them in course of time.

4. These order shall come into force w.e.f. October 1, 1960 and shall apply to all future entrants in the service of the Roadways organization and also the existing temporary employees who accept to continue to work on the revised terms and conditions of service. The status of Roadways employees already made permanent remains unaffected. All the existing temporary employees except those mentioned in para 2 above may be asked to indicate in writing if the new service conditions mentioned above are acceptable by them. Those who accept the new terms and conditions of service will be required to fill in a separate acceptance for which will be kept with their service records. If, however, any of the employees do not accept the new terms their services are to be terminated in accordance with the terms of their employment. I am to suggest that the implications of the revised orders may be explained to all concerned by the

General Managers and Asstt. General Managers and Chief Mechanical Engineer and that necessary action may please to intimated forthwith in order to implement the above orders."

(Emphasis supplied)

7. The above order was followed by another Government Order being Government Order No. 3567-P/XXX-2198/99 dated 28.10.1960 which is reproduced as below:--

"In continuation of G.O. No. 30140/XXX-135-V/1959 dated 16.09.1960, I am directed to say that the question or declaration the permanent posts in the Roadways Organization (including the Roadways Central Workshop Kanpur) as pensionable has been under consideration of Government for some time past. In this connection, the Governor has been pleased to order that the permanent gazetted and non-gazetted incumbents of the following three categories would be entitled to the contributory Provident Fund cum Pension Rules;-

(a) The employees working in the office establishment of the Asstt. General Manager, General Managers, Service Managers, Chief Mechanical Engineer, Roadways Central Workship, Kanpur and the Headquarter office of the Transport Commissioner.

(b) Supervisory staff of the rank of Junior Station Incharge and above on the traffic side.

2. The Governor has been further pleased to order, under note 3 Below Article 350 of the Civil Service Regulations that the rest of the permanent non-gazetted Employees both in the traffic and engineering sections of the organization, would be treated as non-pensionable posts referred to above, will be eligible for Provident Fund benefits in accordance with the provisions of the Employees Provident Fund Act.

3. I am also to add that Temporary Employment of the categories mentioned in para 1 above will be entitled to Provident fund benefits as provided under the Employees Provident Funds Act. As and when they became permanent they will have the option to elect the contributory provident Fund cum Pension Benefits in lieu of Employees Provident Fund.

4. As regards the grant of Provident Fund Benefits to other temporary and work charges employees of the Roadways organization necessary orders have already been conveyed to you in G.O. No. 14880/XXX-219/59 dated 29.07.1960 Copy forwarded under U.P. Parivahan Ayukta (Lekha) U.P. Lucknow endorsement No. C-935FA/594FA/57 dated 1.11.1960 to all the General Managers, Asstt. General Managers, Service Managers, Accounts Officers and all other concerned for information and necessary action."

8. The third Government Order dated 08.09.1961, where the State Government made further provisions for earned leave, extraordinary leave, in case, in respect

of permanent non pensionable employees in the Roadways Organization but the order categorically stated that roadways employees not covered by the Government order dated 28.10.1960, would be treated as holders of non pensionable posts.

9. On 01.06.1972, the U.P. State Road Transport Corporation (UPSRTC) was constituted under Section 3 of the Road Transport Corporation Act, 1950. Here all the employees of the erstwhile State of UP Government Roadways, who were treated to be on deputation and in U.P. Roadways they were holding pensionable posts were entitled for pension.

10. A series of other Government Orders reiterate the above position. The status of UP Government Employees initially in the corporation was on deputation and they were later absorbed in the Corporation. None of the petitioners who were recruited in the corporation were entitled for pension but were entitled for contributory pension under the Contributory Pension Scheme. Only such employees were liable for pensionary benefits, who were working earlier to their absorption on permanent Gazetted or Non-Gazetted posts in UP Roadways establishment, as provided in Para 1 of the Government order dated 28.10.1960.

11. The petitioners have not been able to show that they were working on pensionable posts. No worthwhile evidence has been placed before this Court that any of the petitioners were permanent employees of the "U.P. Roadways" and was entitled for pension.

12. But first on latches. It is admitted fact that all the petitioners before this Court, who claim pensionary benefits have already accepted the post retirement benefits which are applicable to them including contributory pension. After a long period, ranging in some cases to ten years or more, have they filed these writ petitions. They have not properly explained the delay, except stating that their claim is a continuous cause of action, etc. As it is already been referred above the main basis of the petitioners in filing the present writ petition is the order passed by the Hon''ble Allahabad High Court in Mirza Atahar Beg case, which has already been referred above.

13. In the case of State of Orissa and Another Vs. Mamata Mohanty, (2011) 112 CLT 46 : (2011) 2 SCALE 377 : (2011) 3 SCC 436 : (2011) 2 SCC(L&S) 83 : (2011) 2 SCR 704 : (2011) AIRSCW 1992 : (2011) AIRSCW 1332 Hon''ble Apex Court rejected the contention of the similarly situated persons as they had belatedly filed their petitions only after relief was granted to others.

"54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time. (See: Rup Diamonds and Others Vs. Union of India and Others, AIR 1989

SC 674 : (1989) 20 ECC 15 : (1989) 40 ELT 226 : (1989) 1 JT 7 : (1989) 2 SCALE 356 : (1989) 1 SCALE 1 : (1989) 2 SCC 356 : (1989) 1 SCR 13 : (1989) 1 UJ 306 , State of State of Karnataka and Others Vs. S.M. Kotrayya and Others, (1996) 8 AD 5 : (1997) 1 LLJ 640 : (1996) 7 SCALE 179 : (1996) 6 SCC 267 : (1996) 5 SCR 426 Supp and Jagdish Lal and others Vs. State of Haryana and others, AIR 1997 SC 2366 : (1997) 5 JT 387 : (1997) 4 SCALE 202 : (1997) 6 SCC 538 : (1997) SCC(L&S) 1550 : (1997) AIRSCW 2257 : (1997) 5 Supreme 1 ".

14. In the case of S.S. Balu and Another Vs. State of Kerala and Others, AIR 2009 SC 1994 : (2009) 122 FLR 54 : (2009) 2 JT 26 : (2009) 1 SCALE 723 : (2009) 2 SCC 479 : (2009) 1 SCC(L&S) 388 : (2009) 1 SCR 196 : (2009) 2 SLJ 480 : (2009) AIRSCW 1644 Hon''ble Supreme Court observed as under:--

"17. It is also well settled principle of law that ''delay defeats equity". Government Order was issued on 15.1.2002. Appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and State of Kerala preferred an appeal there against, they impleaded themselves as party respondent. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage."

15. In New Delhi Municipal Council Vs. Pan Singh and Others, AIR 2007 SC 1365 : (2007) 113 FLR 338 : (2007) 4 JT 253 : (2007) 4 SCALE 204 : (2007) 9 SCC 278 : (2007) 2 SCC(L&S) 398 : (2007) 3 SCR 711 : (2008) 3 SLJ 130 : (2007) AIRSCW 1705 : (2007) 3 Supreme 743 Hon''ble Supreme Court held as under:--

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and latches are relevant factors for exercise of equitable jurisdiction."

16. In the case of Smt. Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others, AIR 2010 SC 2962 : (2011) 111 CLT 213 : (2010) 8 JT

298 : (2010) 7 SCALE 571 : (2010) 8 SCC 467 : (2010) 9 SCR 476 : (2010) 8 UJ 3854 : (2010) AIRSCW 4784 , Hon''ble Supreme Court referring to various earlier judgments, observed as under:

"30. If some person has taken a relief from the Court by filing a Writ Petition immediately after the cause of action had arisen, petitioners cannot take the benefit thereof resorting to legal proceedings belatedly. They cannot take any benefit thereof at such a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person. In State of Karnataka and Others Vs. S.M. Kotrayya and Others, (1996) 8 AD 5 : (1997) 1 LLJ 640 : (1996) 7 SCALE 179 : (1996) 6 SCC 267 : (1996) 5 SCR 426 Supp , this Court rejected the contention that a petition should be considered ignoring the delay and laches, on the ground that the petitioner therein filed the petition just after coming to know of the relief granted by the Court in a similar case, as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.

31. The same view has been reiterated by this Court in Jagdish Lal and others Vs. State of Haryana and others, AIR 1997 SC 2366 : (1997) 5 JT 387 : (1997) 4 SCALE 202 : (1997) 6 SCC 538 : (1997) SCC(L&S) 1550 : (1997) AIRSCW 2257 : (1997) 5 Supreme 1 , observing as under:--

"Suffice it to state that appellants may be sleeping over their rights for long and elected to wake-up when they had impetus from Veerpal Chauhan and Ajit Singh''s ratio...desperate attempts of the appellants to re-do the seniority, held by them in various cadre...are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well."

32. In Rup Diamonds and Others Vs. Union of India and Others, AIR 1989 SC 674 : (1989) 20 ECC 15 : (1989) 40 ELT 226 : (1989) 1 JT 7 : (1989) 2 SCALE 356 : (1989) 1 SCALE 1 : (1989) 2 SCC 356 : (1989) 1 SCR 13 : (1989) 1 UJ 306 , this Court considered as case where petitioner wanted to get relief on the basis of the judgment of this Court wherein a particular law had been declared ultra vires. The Court rejected the petition on the ground of delay and laches observing as under:--

"There is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they have not pursued for several years. Petitioners were not vigilant but were content to be dormant and close to sit on the fence till somebody else''s came to be decided."

(Emphasis supplied)

17. During the course of the argument, learned counsel for the respondent Mr. Arvind Vashistha, Senior Advocate, relied upon a recent judgment of the Allahabad High Court in the case of Suresh Chandra v. State of UP and others

decided on 07.07.2014. It is a long judgment, dealing with each and every aspect of the present matter, as is there before this Court. The petitioners in the above case were on similar footing as are the present petitioners who seek pension on same grounds. Their petitions were dismissed by the learned judge. Every aspect of the matter which is presently canvassed before this Court or could be canvassed before this Court, has been dealt with in detail in the above judgment and this Court is in total agreement with the findings reached by the learned Single Judge in the above matter, where ultimately the claim of the petitioners was dismissed. On latches it was stated as under:--

"28. Large number of employees of the respondent Corporation have retired during the last 55 years, who were working on a non pensionable post, as provided by the Government Orders dated 16.10.1960 and 28.10.1960. Now, some of the erstwhile, employees, who are petitioners in this bunch of writ petitions have belatedly claimed pension. Even if it is assumed for a moment that the claim of the petitioners may be accepted, yet it will cause tremendous, administrative and financial problems for the Corporation and may amount to permit the petitioners to unsettle the matters which are settled. The negligence or omissions on the part of the petitioners to assert their alleged right of pension after long lapse of time and other circumstances shall cause prejudice to the respondents. Belatedly filed representations decided by the Corporation in regard to a ''Stale'' or ''dead'' issue/dispute of pension in compliance with the direction of this Court passed in writ petitions filed earlier by some petitioners, the date of decision on such representation cannot be considered as furnishing a fresh cause of action for reviving the dead issued or time barred disputed. The issue of limitation or delay or latches has to be considered with reference to the original cause of action and not with reference to the date on which order deciding the representation in compliance of the order of this Court, has been passed by the respondent Corporation. The directions of this Court in earlier writ petitions filed by some of the petitioners to consider a representation, without examining the merits, will not extend the limitation or erase the delay and latches."

18. This Court therefore cannot loose sight of the fact that though the petitioners were working on a non pensionable post and have raised a highly belated claim for their pension and even if it is assumed for the sake of argument that they have a claim for pension (though it is not conceded by the respondents), grant of such a relief to the petitioners at this belated stage will cause tremendous administrative as well as financial constraints for the State Corporation as well as the State and would also amount to unsettling matters, which have long been settled, as observed in the above case.

19. This Court is in total agreement with a view taken by the learned Single Judge of Hon''ble Allahabad High Court in the above decisions that these petitions are liable to be dismissed on the ground of laches alone. Yet purely in the interest of justice and for the reasons that long arguments have already been made on merit, though it is a fit case for dismissal on latches, yet it is being

heard and decided on merit as well.

20. As we have already observed the petitioners have already taken the posts retirement benefit including CPF, can they now turn around and say that what they have already received was not enough and they need to get pension as well. In view of this Court at this stage the petitioners cannot be permitted to turn around and contend that they should be given pension. Similar claim as the one being raised by the petitioners before this Court was raised by the employees of the UPSRTC before a learned Single Judge of Hon''ble Allahabad High Court in the case of Har Bux Pathak V. UPSRTC. The writ petition of Har Bux Pathak was dismissed. Against the aforesaid judgment in the case of Har Bux Pathak V. State of U.P. and others, Special Appeal No. 34 of 1992 Har Bux Pathak V. UPSRTC was filed which was dismissed by the Division Bench of this Court by judgment dated 22.9.1992 observing as under:--

"On a careful perusal of the G.O. dated 16.9.1960 we find that it deals with the revised terms and conditions of service of the temporary employees of the Roadways and the issuance of this G.O. was necessitated by the fact that the conditions of service of the Roadways employees were being governed by various rules and standing orders of the Government applicable to other temporary government departments. It is in that context that it was stated in that G.O. that in view of the special service conditions of the employees of the Roadways it was necessary to evolve a new set of service conditions for them compatible with the nature of work and functions of the Roadways. Therefore, in supersession of the previous standing orders and the Rules, the Government laid down a new set of Rules prescribing terms and conditions of service of the employees of the Roadways. It is pertinent to point out here that this G.O. referred to the general terms and conditions of service and did not specifically point out to the question of pension or similar other retrial benefits. Since the general terms and conditions of temporary employees only were being revised it was specifically mentioned therein that the "status of the Roadways Employees already made permanent remains unaffected." In our considered view, the above clause merely deals with general terms and conditions of the Roadways employees who had already been confirmed and it had nothing to do with the question of pension. In making this observation we have drawn sustenance from the opening words of G.O. dated 28.10.1960, namely, "the question of declaring permanent posts in the Roadways Organization as pensionable was under the consideration of Government for some time past." With these opening words, the G.O. declares that only three categories of permanent gazetted and non-gazetted incumbents mentioned therein shall be entitled to the Contributory Provident Fund-cum Pension Rules, while the rest of the permanent non-gazetted employees both in the traffic and Engineering sections of the Roadways would be treated as non-pensionable and they will be eligible for provident fund benefits in accordance with the Employees Provident Fund Act. On perusal of the above G.O. it is evidently clear that it was intended to cover the cases of employees of the Roadways who were already confirmed against gazetted and non-gazetted posts of the Roadways. On a conspectus of the entire materials we have therefore no hesitation in concluding that the G.O. dated 28th October, 1960 was not applicable to all the employees who were already employed and were to be employed in the Roadways. While on this point, it must be mentioned that the appellant himself became a member of the Employees Provident Fund Act, which, as has already been noticed, was applicable only to Government servants holding non-pensionable posts. Records further indicate that he also withdrew his share of the G.P.F. as also the Government contribution at the time of his retirement. It is too late in the day, therefore, for the appellant to turn round and claim that he had been holding a pensionable posts.

On the conclusions as above, we dismiss this appeal without any order as to costs."

21. As per the Government Order dated 28th October, 1960 only three category of posts were made pensionable. The rest were non pensionable. The petitioners were working on such non pensionable posts is an admitted fact.

22. As already stated above in Mirza Atahar Beg and others, petitioners were also retired employees of UPSRTC and were denied pension, had filed writ petition before the Hon''ble Allahabad High Court which was allowed and this judgment was upheld in special appeal by a Division Bench. The petitioner''s rely upon Mirza Atahar Beg and claim that they too are entitled for pension. All the same, as noticed by the learned Single Judge in the case of Suresh Chandra (supra), Mirza Atahar Beg case is also distinguishable on facts. In Paragraph 24 of the Division Bench''s judgment the Hon''ble Court has given a finding that it is not the case of UPSRTC that respondent Mirza Atahar Beg was not a permanent employee of Roadways. Hence Mirza Atahar Beg was treated to be a permanent employee of Roadways, which is not the case here before this Court. Consequently, the judgment in the case of Mirza Atahar Beg, which is also distinguishable of facts, is of no help to the petitioners.

23. An argument has been advanced that the petitioners that prior to their absorption in the State Corporation were government employees and all government employees are liable to get pension and hence they cannot be excluded. This argument of the petitioners, however, is totally misconceived.

24. Regulation 350 of Civil Service Regulations reads as under:--

"350-All establishments, whether temporary or permanent, shall be deemed to be pensionable establishments:

Provided that it is open to the State Government to rule that the service in any establishment does not qualify for pension.

(The amendment shall be deemed always to have been substituted.)

1. Service in Dak Bungalow and District Garden Establishments does not qualify.

2. The Service of a Patwari, whether appointed before or after the abolition of

the Patwari or Village Officers Cesses and Funds, does not qualify in any case in which it did not qualify prior to that abolition.

3. Service in not-gazetted posts in Government Technical and industrial institution in the Uttar Pradesh does not qualify in case of persons appointed to such posts on or after November 16, 1938."

25. In other words though all government establishments are deemed to be pensionable yet the State Government has power to exclude certain establishments from the grant of pension. The 1960 Government Order reference of which has been given above does just that. It excluded certain posts in the Roadways from pension, such as the one occupied by the petitioners. The said G.O. was never challenge by any of the petitioners so far.

26. The remaining arguments of the petitioners that the action of the Government (in the year 1960) is violative of the Constitution of India cannot be accepted as Article 14 provides for a reasonable classification and further this G.O. was never challenged earlier.

27. The argument that pension is not a bounty but a property or a right of the petitioner is all very well, and it only speaks of the settled position of law. All the same, for asserting there rights one must first have served on a pensionable post. This the petitioners have utterly failed to prove before this Court. In Prabhu Narain and others v. State of U.P and others (2004) 13, SCC, 662, it is precisely this aspect which has been reiterated by the Hon''ble Apex Court that an employee is entitled for pension only under some scheme or Rule.

28. All government posts are not pensionable posts. There are pensionable as well as non pensionable posts. Normally a non-pensionable post has a provision of what is known as Contributory Provident Fund (CPF). A government servant holding a non pensionable post is required to contribute every month from his salary an amount which goes into a pool where the government also contributes, which is normally an equal amount, which is then given to the government servant at the time of his retirement. All the petitioners which are presently before this Court are covered under this scheme (CPF). They have been regularly contributing from their salary under this scheme and at the time of their retirement each one of them has received this amount called CPF. It is too late in the day to undo what has already been done. Petitioner''s case fails both on law as well as on equity.

29. There is no force in the present writ petitions. All petitions fails and are hereby dismissed. No order as to costs.

