

(2018) 07 UK CK 0005

In the Uttarakhand High Court

Case No : Writ Petition No. 466 of 2017 (S/B)

Shri G.P. Tyagi and others

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 03-07-2018

Acts Referred:

Uttar Pradesh Water Supply and Sewerage Act, 1975 — Section 3, 4, 15, 15(1), 31, 37, 89, 97(1)(2)(c)
Uttar Pradesh Reorganisation Act 2000 — Section 86, 87, 88, 74(1)
Constitution of India, 1950 — Article 14, 32, 226

Citation : (2018) 07 UK CK 0005

Hon'ble Judges : RAJIV SHARMA, J;SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : P.S. Rawat, K.N. Joshi, Prabha Naithani, D.S. Patni

Final Decision : Dismissed

Judgement

Rajiv Sharma, J, Sharad Kumar Sharma, J

The present writ petition is rather a second phase of litigation which has been initiated by the petitioners, who are 26 in numbers, challenging the order

dated 7th December, 2016, passed by respondent No. 2, whereby, the respondent No. 2, i.e. competent Authority / Secretary to Government of

Uttarakhand, Drinking Water & Sanitation Department / Ex-officio Chairperson of respondent No. 3, has rejected undated comprehensive

representation of the petitioner, which is said to have been filed in compliance of the judgment dated 18th January, 2010 rendered by the Honâ??ble

Apex Court in Civil Appeal No. 478 of 2010, whereby, the Honâ??ble Apex Court has passed the following directions :-

â??7. Accordingly, following the said decision, with which we are in respectful agreement, the appeals are allowed and the impugned orders are set

aside leaving the parties to bear their own costs.

8. At this juncture, learned counsel appearing on behalf of the respondents prays that the appellant may be directed to consider the claim of the

respondents at least for the purpose of pensionary benefits. We express no opinion on the submission. It will be open to the respondents to make

representation to the authorities concerned on the issue. As and when such representations are made, the same shall be considered expeditiously on

their own merit.

2. Seeking compliance of the judgment dated 18th January, 2010, the petitioners contends that they have preferred the Contempt Petition before the

Honâ??ble Apex Court, being Contempt Petition No. 130 of 2015, which was decided by the Honâ??ble Apex Court on 19th September, 2016,

directing to comply with the direction as given by the judgment dated 18th January, 2010. Another relief which has been sought by the petitioners was

to the effect that mandamus may be issued commanding the respondents to calculate the pay and other claims of the petitioners payable for the period

of two years of service which they alleged that they were forcibly kept away from serving by making them retire at the age of 58 years and to re-

settle the post retiral benefits including the pension, gratuity, interest on gratuity, encashment of leave etc. after taking into consideration the age of

retirement as to be 60 years.

3. In this 2nd phase of litigation, petitioners in the writ petition, claim for the following reliefs :-

â??[a] Issue an appropriate writ, order or direction in the nature of certiorari calling for the record of the case and quashing, annulling and setting

aside the order dated 07-12-2016 passed by respondent No. 2 dismissing Comprehensive Singular Representation (CSR) made by the petitioners in

regard to their claim of 60 years as their age of superannuation and consequential benefits of two years full pay and all post-retirement benefits.

[b] ISSUE an appropriate writ order or direction in the nature of mandamus directing and commanding the respondents to calculate and pay the

following claims of the petitioners, namely : (i) full pay and allowances of all the petitioners for the period of two years when they were forcibly kept

out of service by retiring them at the age of 58 years and (ii) all post-retirement benefits, including pension, gratuity, interest on gratuity, encashment of

leave etc. by taking 60 years to be the age of superannuation, deducting from (i) and (ii) the amounts, already paid.

[c] Any other order or direction which this Honâ??ble Court may deem just and proper for concluding the proceedings at the earliest having regard

to the advanced age of all the petitioners.

[d] Award the cost of writ petition.â??

4. Brief facts which are necessarily required to be considered for the purposes of adjudicating the Writ Petition in the light of the relief sought by the

petitioners. The fact which has revealed from the records and as placed before us is that prior to issuance of the Circular, which we will be dealing

with at a later stage, the petitioners have admitted the fact that when they had preferred an earlier Writ Petition, being Writ Petition No. 20 of 2006, at

that point of time itself, the petitioners were retired employees having already superannuated and had availed their post retiral dues in the earlier set of

litigation by way of Writ Petition No. 20 of 2006, presently, they have confined their relief for the grant of pensionary benefits after taking into

consideration the extended period of service treating their age of superannuation as to be 60 years. Another aspect which is also revealed from the

record is that the judgment which was rendered by the Honâ??ble Apex Court in the Appeal Nos. 478 of 2010 and 479 of 2010, preferred by

Uttarakhand Pay Jal Sansadhan Vikas Avam Nirman Nigam Vs. Arvind Garg and others, i.e. respondent No. 3 (hereinafter to be called as

respondent No. 3) is that SLP preferred by respondent No. 3 against the judgment of Division Bench of this Court dated 05.04.2006 rendered in Writ

Petition No. 20 of 2006 and bunch of writ petitions as reported in 2006 (1) UD 574. The writ petition was allowed by the Division Bench with the

following directions :-

â??9. Accordingly, the writ petitions are allowed. The petitioners in all these writ petitions shall be entitled for payment of salary for the remaining

period upto the age of 60 years which shall be paid to them within a period of three months from the date of production of certified copy of this order.

No order as to costs. â??

5. The petitioners has taken latitude of the observation made in para 8 of the judgment of Honâ??ble Apex Court dated 18.01.2010 for representing

their claims of pensionary benefits. Paragraph 4 and 8 of the judgment reads as

under:-

4. A similar issue came up for consideration of this Court in U.P. Jal Nigam & Anr. Vs. Jaswant Singh & Anr. 2006 (11) SCC 464, wherein

applying the doctrine of laches, it was held that no relief could be granted to the persons who had approached the Court after their retirement. Only

those persons who had filed the writ petitions when they were in service or who had obtained interim orders for their retirement, could be allowed to

benefit from the decision in Harwinder Singh's case (supra).

8. At this juncture, learned counsel appearing on behalf of the respondents prays that the appellant may be directed to consider the claim of the

respondents at least for the purpose of pensionary benefits. We express no opinion on the submission. It will be open to the respondents to make

representation to the authorities concerned on the issue. As and when such representations are made, the same shall be considered expeditiously on

their own merit.

6. The petitioners, admittedly, sat over the issue and did not prefer any representation as they sought to prefer in pursuance to the leave granted by the

Honorable Apex Court rather, for the first time, they have submitted their representation after almost a lapse of about 3-1/2 years on 24th October,

2013, which has been rejected by the impugned order dated 7th December, 2016, thereby declining to treat the services of the petitioners to have

superannuated at the age of 60 years.

7. Prior to 9th November, 2000, i.e. before the creation of State of Uttarakhand, it is the case of the petitioners that when they have originally joined

into the services of the State of U.P. in its Local Self Government, Engineering Department, which had its existence from the time of United

Provinces, which was the erstwhile name of the U.P. during the British regime. With the passage of time, the State of U.P., as it then was, legislated

an Act called as U.P. Water Supply and Sewerage Act, 1975. Consequent to the said Act, while exercising powers under Section 31 of the Act, the

State Government by issuing a gazette notification, constituted a Corporation / Nigam called as Uttar Pradesh Pey Jal Nigam. As a result of the

constitution of the said Nigam and as per the provision contained under Chapter 4 read with Section 37, the services of all the employees as it existed

in the Local Self Government, Engineering Department of State of U.P. by law

stood transferred to the Nigam on its creation under Section 31 of the Act of 1975. As a result of the constitution of the Nigam under Section 31 and as an impact of Section 37 of the Act, it provided the formulation of Regulation under Section 97 (1) (2) (c) of the Act of 1975. Consequently, U.P. Jal Nigam Service of Engineers (Public Health Branch) Regulation 1978, came into existence which dealt with the provisions for regulating the service conditions of all the employees who stood transferred by operation of Section 37 read with Section 31 of the Act of 1975 with the enforcement of the Regulation w.e.f.

27th April, 1978. Regulation 31 provided as under :-

“31. Except as provided in these Regulations the pay, allowances, pension, leave, imposition of penalties and other conditions of service of the members of the service shall be regulated by rules, regulations or orders applicable generally to the Government Service in connection with the affairs of the State.”

8. On a simplicitor reading of Regulation 31, it is case of the petitioners that it provided that all the service benefits accruing to any employee thus

transferred under Section 37 of the Act and the other service conditions of the employees of the Nigam would be regulated by the Regulation of 1978

or orders /rules as applicable generally to the Government servants in connection with the affairs of State. Extracting the impact of Regulation 31, the

petitioners’ contention is that reference to other service conditions under Regulation 31 of the Regulations of 1978, would entail attraction and

applicability of U.P. Fundamental Rules, as contained in Financial Handbook Vol. II, Part II, IV, as contained in its Regulation 56-A, which at the

relevant time of induction in service provided that an employee serving with the affairs of the State would retire after service on the forenoon on the

last day of the month in which he attains the age of 58 years. Accordingly, the petitioners contention is that the age of retirement in the Nigam was

regulated by Regulation 56 (a) of the U.P. Fundamental Rules as made applicable by the Regulation of 31 of 1978 to the employees of the Jal Nigam

as transferred under Section 37 of the Act of 1975. Regulation 56 (a) of the Financial Hand Book reads as under :-

“56 (a) Except as otherwise provided in this Rule, every Government servant other than a Government servant in inferior service shall retire from

service on the afternoon of the last day of the month in which he attains the age of fifty eight years. He may be retained in service after the date of

compulsory retirement with the sanction of the Government on public grounds which must be recorded in writing, but he must not be retained after the

age of 60 years except in very special circumstances.â??

9. In the meantime, while the petitioners were discharging their duties, the State stood created by virtue of the enforcement of the U.P. Reorganization

Act, 2000, as a result of carving of new State, i.e. the State of Uttarakhand

w.e.f. 9th November, 2000, and by virtue of the implications of the provisions contained under Sections 86, 87 and 88 of the Reorganization Act, all

laws prevailing unless substituted by a new Act or amended thereafter would continue to apply in the State of Uttarakhand. Consequently, the

petitionersâ?? contentions are that the Act of 1975 and the Regulations of 1978 enforced prior to 09.11.2000, governing the service conditions

continued to apply and, consequently, the Financial Handbook Part II too regulating the age of retirement would still continue to be applied on them.

10. Thereafter, it chanced so that after the Division of the State on 09.11.2000, the State of U.P. on 28th November, 2001, made an amendment in the

Fundamental Rules w.e.f. 27th June, 2002, whereby, Regulation 56 (a) dealing with the age of retirement of Government Servants was amended

w.e.f. 28th November, 2001. Consequent thereto, in the State of U.P., the age of retirement of the Government servants was enhanced from 58 years

to 60 years.

11. Based on the said premise, based on the concept of U.P, the State of Uttarakhand too issued a Notification on 15th June, 2002, whereby, the State

of U.K. also enhanced the age of superannuation of the Government servants from 58 years to 60 years and, consequently, making amendment in the

Financial Handbook to the said effect. The same reads as under :-

â??GOVERNMENT OF UTTARANCHAL

Personnel â?" 2 Section

No. 806/Ka-2-2002

Dehradun Dated June 15, 2002.

NOTIFICATION

1. His Excellency the Governor is hereby pleased in public interest to approve the

increase in the age of superannuation from 58 years to 60 years

2. This order shall be in force from June 1, 2002.

3. Action to carry out necessary amendment to Fundamental Rule 56 contained in Volume II Parts II to IV of the Financial Hand Book will be taken separately by the Finance Department.

4. Detailed guide-lines in respect of the above provisions will be separately issued by the State Government.

Signed

(ALOK KUMAR JAIN)

SECRETARY??

12. The petitioners contention is that as soon as the said amendment was brought into effect from 1st June, 2002 by the State of Uttarakhand, and if it is to be read with Regulation 31 of the Regulations of 1978, the benefit of the extended period of age of superannuation as contemplated by the Notification dated 15th June, 2002 would ipso facto should have been made applicable to all the employees who were working with the respondent No. 3, including the petitioners.

13. It is an admitted case that the respondent No. 3, as it now exists, for the first time, was created in the State of Uttarakhand by virtue of the

Notification dated 22nd November, 2002, as published in the official gazette. It constituted a Nigam, known as ??Uttaranchal Pey Jal Sansadhan

Vikas Avam Nirman Nigam?, and the existence of the Corporation was given effect from 7th November, 2002. Hence, the averments made in para

12 in the writ petition by the petitioners, that by virtue of the Notification dated 22nd November, 2002, the creation of respondent No.3, was made

w.e.f. 9th November, 2000, is contrary to the records because as a matter of fact, respondent No. 3 was created for the first time by notification

22.11.2002 w.e.f. 07.11.2002.

14. The petitioners and such other employees raised a claim though after their respective date of superannuation, that they ought to be given the

benefit of the extended age of retirement as enforced by the Governor of Uttarakhand vide its Notification dated 15.06.2002 as enforced w.e.f.

01.06.2002. It is the case of the petitioners further that the Notification dated 15th June, 2002, read with Notification dated 12th July, 2005,

contemplated an enhancement of age of superannuation of the employees belonging to the Public Corporation / Undertaking including Nigam, it was

adopted by the respondent No. 3 by virtue of Office Memorandum dated 29th July, 2005, which is quoted hereunder :-

â??HEAD OFFIC, UTTARANCHAL PEYJAL NIGAM,

DEHRADUN

Letter No.3379/Uttaranchal Government

Dated 29/7/2005

OFFICE MEMORANDUM

On account of there being no proposal to hold the meeting of the Board of Directors of the Uttaranchal Peyjal Nigam in the near future, adoption of

the Notification issued by the Government of Uttaranchal Industrial Development Section 1 conveying the approval of the Governor to enhance the

age of superannuation of employees of the Public Corporations / Undertakings from 58 years to 60 years in the public interest, was done, as it is, by

circulation by the Board of Directors of the Uttaranchal Peyjal Sansadhan Vikas Avam Nirman Nigam. Accordingly, the following Notification No.

2413/Seven-ID/05/182-Indutries/04 dated July 12, 2005 is adopted as it is by the Uttaranchal Peyjal Sansadhan Vikas Avam Nirman Nigam.

NOTIFIATION

1. The Governor is pleased to approve in public interest the increase in the age of superannuation of employees of the Public Corporation /

Undertakings from 58 years to 60 years.

2. This order will come into force with immediate effect.

3. Detailed guide-lines for giving effect to the above provision will be issued separately.

(B.P. PANDEY)

CHAIRMANâ??

15. Petitioners contentions is that the combined effect of Section 31 of 1975 Act read with Regulation 37 and 31 of the Regulations, despite provision

of adoption of law provided under Section 86 and 87 of the Reorganization Act, non applying the benefit of enhanced age of superannuation is

contrary to the proviso under Section 74 (1) of Reorganization Act, 2000. The petitioners by an interpretation of Section 74 (1) of the Re-organisation

Act to be read with Regulation 31 of the Regulations of 1978 raised their claim for extending age of retirement upto 60 years, but the same was

denied by the Nigam vide its various orders directing petitioners to retire on attaining 58 years of the age.

16. The petitioners feeling themselves aggrieved by the decision taken by respondent No. 3, declining to extend the age of superannuation in the light

of the Notification dated 15th June, 2002, to be read with the Office Memorandum dated 29th July, 2005, which enforced the Notification of extension

of age of retirement after its adoption prospectively, had preferred Writ Petition, being Writ Petition No. 20 of 2006 and various other writ petitions by

different employees. There was another bunch of Writ Petitions which was also filed almost for an identical cause of action. These writ petitions, as

preferred by the petitioners, came for consideration before the Division Bench of this Court and the Division Bench, vide its judgment dated 5th April,

2006, while deciding bunch of writ petitions, allowed the Writ Petition holding thereof that the petitioners would be entitled for the payment of salary

for the remaining period upto age of 60 years. For the said purpose, the Division Bench of this Court had made a specific observation in para 3 of the

judgment that since all the petitioners in the writ petition were retired before the issuance of the Office Memorandum dated 29th July, 2005, therefore,

it was held that the petitioners should be given continuance of service upto the age of 60 years. Para 9 of the judgment reads as under :-

“9. Accordingly, the writ petitions are allowed. The petitioners in all these writ petitions shall be entitled for payment of salary for the remaining

period upto the age of 60 years which shall be paid to them within a period of three months from the date of production of certified copy of this order.

No order as to costs.”

17. On perusal of the judgment dated 5th April, 2006, allowing the Writ Petition of the petitioners, the Division Bench has placed reliance on a

judgment rendered by the Hon’ble Apex Court in the case of Harwindra Kumar Vs. Chief Engineer, Karmik and others reported in (2005) 13

SCC 300, decided on 18th November, 2005. Relevant paragraph of the judgment reads as under :

6. Learned counsel in support of the appeals as well as writ petitions submitted that in view of the provisions of Section 37 of the Act and

Regulation 31 of the Regulations framed under Section 97(2)(c) thereof, the age of superannuation of the government servants, as amended from time

to time, would apply to the employees of the Nigam as the same has not been altered by the Nigam by making amendment in Regulation 31 of the

Regulations. On the other hand, learned counsel appearing on behalf of the Nigam submitted that 60 years which is the enhanced age of

superannuation of the government servants would not be applicable to the employees of the Nigam.

7.....

37. Transfer of employees to Nigam. - (1) Save as otherwise provided in this section every person, who was employed in the Local Self Government

Engineering Department of the State Government shall on and from the appointed date become employee of the Nigam and shall hold his office or

service therein by the same tenure, at the same remuneration and upon same other terms and conditions, and with the same rights and privileges as to

pension, gratuity and other matters as he would have held the same on the appointed date if this Act has not come into force, and shall continue to do

so until his employment in the Nigam is terminated or until his remuneration or other terms and conditions of services are revised or altered by the

Nigam under or in pursuance of any law or in accordance with any provision which for the time being governs his service:

89. Directions to the Nigam on questions of policy. -

(1) In the discharge of its functions, the Nigam shall be guided by such directions on questions of policy as may be given to it by the State

Government.

(2) If any question arises whether any matter is or is not a matter as respects which the State Government may issue a direction under sub-section

(1), the decision of the State Government shall be final.

97. Regulations. - (1) The Nigam and a Jal Sansthan may, with the previous approval of the State Government, make regulations, not inconsistent with

this Act and the rules made thereunder, for the administration of the affairs of the Nigam or a Jal Sansthan.

(2) In particular, and without prejudice to the generality of the foregoing power,

such regulations may provide for all or any of the following matters,
namely -

a) - b)

c) the salaries and allowances and other conditions of service of employees of the Nigam or a Jal Sansthan other than employees employed on contract basis.

Regulation 31

31. Besides the provision made under these regulations, the pay and allowances, pension, leave, imposition of penalty and other terms and conditions of service shall be governed by such rules, regulations and orders which are equally applicable to other serving government servants concerned functioning in the State.

From the aforesaid provisions, it would be clear that the appointed date for the purposes of the Act was 18th June, 1975 when the Nigam was

established and under Section 37 of the Act, conditions of service of the appellants/petitioners who were employed in the Local Self Engineering

Department of the Government of Uttar Pradesh before the appointed date, were continued to remain the same as they were before the appointed

date unless and until the same are altered by the Nigam under the provisions of the Act. Section 97 confers power upon the Nigam with the previous

approval of the State Government to frame Regulations in relation to service conditions of employees of the Nigam and acting thereunder, Regulations

were framed by the Nigam in the year 1978, Regulation 31 whereof provides that service conditions of the employees of the Nigam shall be governed

by such rules, regulations and orders which are applicable to other serving government servants functioning in the State of Uttar Pradesh. Thus, from

a bare reading of Section 37 and Regulation 31, it would be clear that the service conditions of the employees of the Nigam would be the same as are

applicable to the employees of the State Government under the Rules, Regulations and Orders applicable to such government servants so long the

same are not altered by the Nigam in accordance with the provisions of the Act. If Regulations would not have been framed, the Nigam had residuary

power under Section 15(1) of the Act whereby under general power it could change the service conditions and the same could remain operative so

long regulations were not framed but in the present case, regulations were already framed in the year 1978 specifically providing in Regulation 31 that the conditions of service of the employees of the Nigam shall be governed by the Rules, Regulations and Orders governing the conditions of service of government servants which would not only mean then in existence but any amendment made therein as neither in Section 37 nor in Regulation 31, it has been mentioned that the Rules then in existence shall only apply. After the amendment made in Rule 56(a) of the Rules by the State Government and thereby enhancing the age of superannuation of government servants from 58 years to 60 years, the same would equally apply to the employees of the Nigam and in case the State Government as well as the Nigam intended that the same would not be applicable, the only option with it was to make suitable amendment in Regulation 31 of the Regulations after taking previous approval of the State Government and by simply issuing direction by the State Government purporting to act under Section 89 of the Act and thereupon taking administrative decision by the Nigam under Section 15 of the Act in relation to age of the employees would not tantamount to amending Regulation 31 of the Regulations.

9. In the present case, as Regulations have been framed by the Nigam specifically enumerating in Regulation 31 thereof that the Rules governing the service conditions of government servants shall equally apply to the employees of the Nigam, it was not possible for the Nigam to take an administrative decision acting under Section 15(1) of the Act pursuant to direction of the State Government in the matter of policy issued under Section 89 of the Act and directing that the enhanced age of superannuation of 60 years applicable to the government servants shall not apply to the employees of the Nigam. In our view, the only option for the Nigam was to make suitable amendment in Regulation 31 with the previous approval of the State Government providing thereunder age of superannuation of its employees to be 58 years, in case, it intended that 60 years which was the enhanced age of superannuation of the State Government employees should not be made applicable to employees of the Nigam. It was also not possible for the State Government to give a direction purporting to Act under Section 89 of the Act to the effect that the enhanced age of 60 years would not be applicable to the employees of the Nigam treating the same to be a matter of policy nor it was permissible for the Nigam on the basis of

such a direction of the State Government in policy matter of the Nigam to take an administrative decision acting under Section 15(1) of the Act as the same would be inconsistent with Regulation 31 which was framed by the Nigam in the exercise of powers conferred upon it under Section 97(2)(c) of the Act.

10. For the foregoing reasons, we are of the view that so long Regulation 31 of the Regulations is not amended, 60 years which is the age of superannuation of government servants employed under the State of Uttar Pradesh shall be applicable to the employees of the Nigam. However, it would be open to the Nigam with the previous approval of the State Government to make suitable amendment in Regulation 31 and alter service conditions of employees of the Nigam, including their age of superannuation. It is needless to say that if it is so done, the same shall be prospective.â??

18. Primarily, the foundation of the Division Bench judgment of this Court was on the premise of ratio laid down by Honâ??ble Apex Court in Harwindra Kumarâ??s case (supra).

19. As a matter of fact, it is the case of the petitioners that respondent No. 3 had issued a Circular on 24th July, 2006, which the petitioners contend that it was in purport to be in compliance of the judgment dated 5th April, 2006, as passed in Writ Petition No. 20 of 2006. The decision / office memo dated 24.07.006 was based on Boardâ??s Resolution No. 1.7 dated 07.02.2004, the issue was for continuing the service rules of Nigam employees with same terms and conditions as it was applicable earlier. The same is quoted hereunder :-

â??After formation of Uttaranchal Peyjal Nigam, at present no separate regulations have been notified for service conditions for any service. Since conditions of service of the employees working in the Uttaranchal Jal Nigam are the same as those of the employees working in the Uttar Pradesh Jal Nigam, therefore, until separateÂ serviceÂ conditionsÂ areÂ notifiedÂ forÂ the Uttaranchal Peyjal Nigam, matters concerning various employees of the Uttaranchal Peyjal Nigam will be dealt with under the service regulations in vogue in the Uttar Pradesh Jal Nigam. Similarly, for dealing with construction work also, further action will be taken according to the financial rules in vogue in the Uttar Pradesh Jal Nigam.â??

20. On a simple reading of the said Circular dated 24th July, 2006, it simply

intended to meet object of the Re-organization Act and in the absence of there being Regulation framed governing the service conditions of the employees of Uttarakhand Pey Jal Nigam, the service conditions would be governed by the Regulation of 1978. The said Memorandum dated 24th July, 2006, under no specific terms, it could be said that it was issued in compliance of the judgment dated 5th April, 2006, as rendered by the Division Bench of this Court in Writ Petition No. 20 of 2006 nor does the said office memo records any finding to the said effect. It seems that the petitioners have developed a case that as if the Circular dated 24th July, 2006, intends to enhance the age of superannuation from 58 to 60 years in pursuance to the notification dated 15th June, 2002 to be read with the judgment dated 5th April, 2006. On account of the fact that this Office Memorandum dated 24th July, 2006, was never brought to the notice of the Honâ??ble Apex Court by respondent No. 3 when judgment dated 18.01.2010 was rendered, when the respondent No. 3 has put the challenge to the judgment of the Division Bench dated 5th April, 2006, as such, any decision rendered by the Honâ??ble Apex Court on a challenge being given to the judgment of the Division Bench dated 5th April, 2006, by the respondents No. 3, could be said that they were not approaching the Apex Court with clean hands. To elucidate the impact of Office Memorandum dated 24th July, 2006, the same is quoted hereunder :

â??Letter No. 2838/Board Meeting Dated 24.07.2006

Office Memorandum

It is hereby clarified that at the first meeting of the Board of Directors of Uttaranchal Peyjal Nigam held on 07.02.2004 by Resolution No. 1.7, the following proposal was adopted by the Board of Directors to continue in the Uttaranchal Peyjal Nigam, temporarily, the Service Regulations and Building Procedures as they are in vogue at present in the Uttar Pradesh Jal Nigam :

â??After formation of Uttaranchal Peyjal Nigam, at present no separate regulations have been notified for service conditions for any service. Since

conditions of service of the employees working in the Uttaranchal Jal Nigam are the same as those of the employees working in the Uttar Pradesh Jal

Nigam, therefore, until separate service conditions are notified for the Uttaranchal Peyjal Nigam, matters concerning various employees of the

Uttaranchal Peyjal Nigam will be dealt with under the service regulations in vogue in the Uttar Pradesh Jal Nigam. Similarly, for dealing with

construction work also, further action will be taken according to the financial rules in vogue in the Uttar Pradesh Jal Nigam.â??

All employees and organizations are familiar with the above decision and action taken there under and it is requested that further action on various

matters be taken with reference to service regulations / rules. In this connection any misconception will be inappropriate because until separate

service conditions are notified for the Uttaranchal Peyjal Nigam the service conditions in vogue in the Uttar Pradesh Jal Nigam for various employees

will continue to be in force.

Sd/-

[P.K. Sharma]

Managing Director

L.No. and date as above :

Copy forwarded for information and necessary action to:

- 1.All Chief Engineers, Uttaranchal Peyjal Nigam
2. All Superintending Engineers / General Manager, Uttaranchal Peyjal Nigam
3. All Executive Engineers/Project Manager, Uttaranchal Peyjal Nigam
4. Guard File

Managing Directorâ??

21. Against the judgment in the case of G.P. Tyagi Vs. Uttaranchal Pey Jal Sansadhan Vikas Avam Nirman Nigam and three others as reported in

2006 (1) UD 574, an SLP was preferred, which on the grant of leave, was registered as Civil Appeal Nos. 478 of 2010 and 479 of 2010 decided on

18.01.2010. The Honâ??ble Apex Court, while dealing with the doctrine of laches has framed issues as to whether the respondent No. 3 was entitled

to continue the service of the employ upto the age of 60 years in pursuance to the Notification dated 15th June, 2002, in the light of the decision

rendered in Harwindra Kumarâ??s case (supra). The basic issue which was under consideration before the Honâ??ble Apex Court was that as to

whether what would be the effect of the grant of benefit of age of retirement in relation to those employees despite of being conscious of the

Notification did not challenge the retirement notice and had rather further proceeded to collect their post retirement benefits. The Honâ??ble Apex

Court, while considering the SLP, preferred by respondent No. 3, had taken into consideration the judgment of Honâ??ble Apex Court in the case of

U.P. Jal Nigam and another Vs. Jaswant Singh and another reported in (2006) 11 SCC 464. The Honâ??ble Apex Court, while considering the

aforesaid proposition and its impact to the ratio as laid down in Harwindra Kumarâ??s case (supra) from the view point as to what would be its

effect on those who had retired long back and those who have collected their post retirement benefits. Relevant paragraph of the said judgment reads

as under :-

â??8. Our attention was also invited to a decision of this Court in the case of State of Karnataka and Ors. v. S.M. Kotrayya and Ors. reported in:

(1996) 6 SCC 267. In that case the respondents woke up to claim the relief which was granted to their colleagues by the Tribunal with an application

to condone the delay. The Tribunal condoned the delay. Therefore, the State approached this Court and this Court after considering the matter

observed as under:

â??Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in Sub-section (1) or (2) of Section

21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case

and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to

know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all.

What was required of them to explain under Sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their

grievances before the expiry of the period prescribed under Sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal was

wholly unjustified in condoning the delay.â??

9. Similarly, in the case of Jagdish Lal and Ors. v. State of Haryana and Ors. reported in : (1997) 6 SCC 538, this Court reaffirmed the rule if a person

chose to sit over the matter and then woke up after the decision of the Court, then such person cannot stand to benefit. In that case it was observed

as follows:

â??The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their

rights for long and woke up when they had the impetus from Vir Pal Singh

Chauhan case. The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage.â??

12. The statement of law has also been summarized in Halsbury's Laws of England, Para 911 , pg. 395 as follows:

â??In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

(i) acquiescence on the claimant's part; and

(ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed

and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be

regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in

which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material.

Upon these considerations rests the doctrine of laches.â??

13. In view of the statement of law as summarized above, the respondents are guilty since the respondents has acquiescence in accepting the

retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the

matter. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions,

then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the

question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present

case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken

appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse

of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going

to have serious financial repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when

they themselves are guilty of waiver and acquiescence.

17. The benefits shall only be confined to above mentioned persons who have filed writ petitions before their retirement or they have obtained interim

order before their retirement. The appeals filed against these persons by the Nigam shall fail and the same are dismissed. Rest of the appeals are

allowed and orders passed by the High Court are set aside. There would be no order as to costs.â??

Hence, the petitionersâ?? case on being considered was dismissed on the ground of laches.

22. It seems that ultimately, when the Honâ??ble Apex Court, based on law laid down in the judgment reported in 2006 (11) SCC 464 (Supra) had

allowed the SLP and set aside the judgment of the Division Bench at later stage, the petitioners to the present writ petitions, sought liberty to seek a

permission to file a representation so as to consider â??the claim of respondents atleast for purposes of post retirement benefitsâ??. On the said

request, the Appeal was disposed of directing to decide the representation.

23. In compliance of the judgment dated 18th June, 2010, no representation was preferred by the petitioners within a reasonable time. In the

meantime, State of U.P. framed the Regulation called as Uttar Pradesh Jal Nigam Employees (Retirement on Attaining Age of Superannuation)

Regulations, 2005. The said Regulation is projected to have been issued while exercising powers under Section 3 and 4 of Uttar Pradesh Water Supply

and Sewerage Act, 1975 and considering the effect of U.P. Fundamental Rules 56 (a) as made applicable in Uttar Pradesh. The Regulation of 2005,

as made applicable by the State of U.P. was put to challenge before the Division Bench of High Court of Judicature at Allahabad and by the judgment

dated 29th July, 2010, the Regulations of 2005 were declared as ultra vires as they have created to separate the age of retirement amongst the same

class of employees, holding the same to be discriminatory and held that the Jal Nigam is entitled to continue in the service age upto the age of 60 years

with further direction to pay 20% backwages of those writ petitioners who were

meantime forced to retire on attaining the age of 58 years.

24. The Honâ??ble Apex Court, while dealing with the judgment of the Allahabad High Court dated 29th July, 2010, had framed the following issues

which was required to be considered :-

â??5. the questions involved in these appeals are :

5.1. Whether two different ages of superannuation of 58 and 60 years can be prescribed for the employees similarly situated, including members of the same service, solely on the basis of their source of entry in the service.

5.2 Whether the Uttar Pradesh Jal Nigam (Retirement on Attaining Age of Superannuation) Regulations, 2005 fixing two different ages of superannuation for similarly situated employees of Jal Nigam are discriminatory and ultra vires under Article 14 of the Constitution of India â??

25. The Honâ??ble Apex Court also in the case of Dayanand Chakrawarty (Supra) had dealt with impact of the judgment of Jaswant Singh (Supra)

and none of the findings as recorded therein have been disturbed. However,

the Honâ??ble Apex Court, it seems to have modified the judgment of the Allahabad High Court by giving directions as contained in para 47 and 49,

the same reads as under :-

â??49. In these cases as we have already held that Regulation 31 shall be applicable and the age of superannuation of employees of the Nigam shall

be 60 years; we are of the view that following consequential and pecuniary benefits should be allowed to different sets of employees who were

ordered to retire at the age of 58 years:

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49.1. The employees including Respondents who moved before a court of law irrespective of fact whether interim order was passed in their favour or

not, shall be entitled for full salary up to the age of 60 years. The arrears of salary shall be paid to them after adjusting the amount if any paid.

49.2. The employees, who never moved before any court of law and had to retire on attaining the age of superannuation, they shall not be entitled for

arrears of salary. However, in view of Regulation 31 they will deem to have continued in service up to the age of 60 years. In their case, the

Appellants shall treat the age of superannuation at 60 years, fix the pay accordingly and re-fix the retirement benefits like pension, gratuity etc. On

such calculation, they shall be entitled for arrears of retirement benefits after adjusting the amount already paid.â??

26. It is a case of the petitioners that after the aforesaid judgment, as rendered in Civil Appeal No. 5528 of 2012, U.P. Jal Nigam and others Vs.

Dayanand Chakravarthy and Another (Supra), the U.P. Jal Nigam sought time to comply with the direction. The Honâ??ble Apex Court vide its

order dated 20.01.2014 extended time to comply by 31.03.2014 and, thereafter, a review, being Review Petition No. 316 of 2014 was also preferred

by the State of U.P. but the same was dismissed on 05.03.2014. Even the Curative Petition No. 228 of 2013, also stood dismissed vide judgment dated

14.07.2015.

27. The Honâ??ble Apex Court has rendered the decision in Dayanand Chakrawartyâ?? case (Supra) on 2nd July, 2013. The Review arising out of

the same was dismissed by the Apex Court on 5th March, 2014 and Curative Petition was dismissed on 14th July, 2015. Apparently, it seems that

after the judgment of 2nd July, 2013, the petitioners are said to have preferred the representation only on 24th October, 2013. As against the judgment

passed in the SLP of respondent No. 3, rendered on 18th January, 2010, as already stated that the representation was filed by the petitioners on 24th

October, 2013, yet again, petitioners sat over the issue and filed Contempt Petition, being Contempt Petition No. 130 of 2015, before the Honâ??ble

Apex Court. The same was disposed of by the Honâ??ble Apex Court by the judgment dated 19th September, 2016, granted liberty to file

representation in compliance of judgment dated 18.01.2010 with the direction that the representation preferred by the petitioners would be decided

within four weeks thereafter after following the due procedure. Consequently, in compliance of the Honâ??ble Apex Courtâ??s judgment dated

19th September, 2016, the impugned order dated 7th December, 2016 has been passed in compliance of the judgment dated 18th January, 2010

rejecting the representation of the writ petitioners. The composite representation, as submitted on 24th October, 2013, has been rejected on 07.12.2016

on the following grounds :-

1. The claim of the petitioners for enhancement of the age of the age of superannuation in pursuance to the Notification dated 15th June, 2002, as

adopted by the respondent No. 3 on 12th July, 2005, already stood rejected and settled upto the Apex Court by the judgment dated 18th January, 2010,

which was not disturbed by Honâ??ble Court at any stage in any proceedings till passing order 19.09.2016 in Contempt filed by the petitioners for

compliance of judgment dated 18.01.2010.

2. The latitude which has been granted by the Honâ??ble Apex Court in the judgment dated 18th January, 2010 is as contained in para 8, it was not

with regard to the enhancement of the age of retirement or for the payment of salary rather dispute stood in that regard was affirmed by the Apex

Court for extension for the period of two years, but the direction was only contained in considering the said claim for settlement of post retirement

benefits, meaning thereby, as far as the petitioners are concerned, their claim for the increase of age of superannuation and for the service benefit for

the said period stood finalized and settled by the judgment dated 18th January, 2010.

3. Even according to the composite representation, it is admitted and clear position that the petitioners were superannuated and relieved even much

prior to the adoption of the Notification dated 15th June, 2002 by the respondent No. 3 as made on 12th July, 2005. Since, the petitioners stood

superannuated and have accepted the post retirement dues, they cannot claim their right for extension of age of superannuation in the light of the

judgment rendered in Jaswant Singhâ??s case (Supra), wherein, it has been held as under :-

A. Institution of the petition after retirement and accepting the post retirement dues suffers from the vices of delay and laches.

B. Having not challenged the action at an appropriate time would amount to having acquiescenced their right by accepting post retirement due without

challenging the same in time.

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C. The petitioners ought to have been vigilant enough and filed writ petition at an appropriate time.

D. For consideration of the belated claim, it has always to be taken into consideration the question of prejudice which is likely to be cause to other

parties in the event if the relief is granted.

E. The Nigam cannot be burdened upon to raise the funds to meet the liability in

relation to those persons who have filed belated claim.

4. The relief sought in the present Writ Petition would be barred by the principle of res judicata as petitioners representation for extension of age of

superannuation stood settled by the Apex Court by the judgment of 18th January, 2010 and under the garb of the Office Memorandum dated 29th July,

2005, which has got no bearing on the controversy in question pertaining to the enhancement of age of superannuation. This cannot permit the

petitioners to take opportunity of re-agitating the issue by filing the instant writ petition. While considering the relief claimed by the petitioners, in Writ

jurisdiction under Article 226 of the Constitution of India, the High Court has also to take into consideration the bona fide and fairness with which the

petitioners approach the Court, apart from the reasons which has been assigned above. The petitioners have approached the Court to invoke Article

226 of the Constitution. It seems that the petitioners were opportunist to approach to the Court because they themselves admittedly sat over the

judgment dated 18th January, 2010, passed by the Honâ??ble Apex Court, preferred a belated representation 2013 and filed a much belated

Contempt Petition in 2015 on which direction was issue on 19th September, 2016 to comply with the order dated 18th January, 2010.

5. It seems that the entire controversy has been racked up by the petitioners under the light of the judgment rendered by the Honâ??ble Apex Court

in Dayanad Chakrawartyâ?? case (Supra), though it has got no applicability in the instant case for the reasons in the said judgment it was validity of

the Regulation of 2005 as made applicable in the State of U.P. which was put to challenge which is not a case identical to the case at hand.

6. On scrutiny of the impugned order under challenge, it seems that the petitioner have preferred representation dated 24th October, 2015 not for the

purpose of settlement of post retirement benefits as directed by the Honâ??ble Apex Court judgment of 18th January, 2010, as no relief for re-

fixation of pensionary benefit was made by the petitioners in the representation, rather they again sought relief of enhancement of age of retirement

and benefit accruing from it.

7. The impugned order had also taken into consideration the effect that under an identical circumstances based on the judgment of Dayanad

Chakrawartyâ?? case (Supra), writ petitioners of Writ Petition No. 1700 of 2002,

Rajkumar Sharma Vs. Uttaranchal Pey Jal Nigam, filed a Review

Petition seeking review of the judgment dated 16.06.2003. The Review Petition thus filed had been dismissed by the Coordinate Bench on 02.06.2016.

28. For the reasons assigned above and considering the facts which are being brought on record, we do not find any merit in the writ petition as the

petitioners claim for the reliefs sought in the writ petition is barred by acquiescence and laches and also because of the fact that the claim of the

petitioners for extension of age of retirement stood finalized upto the Apex Court by the judgment dated 18th January, 2010.

29. Consequently, the Writ petition is dismissed. However, there would be no order as to costs.