
(2010) 07 AHC CK 0235

In the Allahabad High Court

Case No : Special Appeal No. 1034 (defective) of 2009 with 1158,1068,1108,1055,1113, 954,1896 (defective) of 2009 with Special Appeal No. 219 (defective) of 2008, with Special Appeal No. 90 (defective), 114, 602, 603,195,130,131,132,133, 134,165,170,169,168 and 167

State of U.P. and Others

APPELLANT

Vs

Sunil Kumar Verma and Others

RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Service (Rescission of Rules) Rules, 1991 — Rule 3
Uttar Pradesh General Clauses Act, 1904 — Section 6

Citation : (2010) 07 AHC CK 0235

Hon'ble Judges : Ashok Bhushan, J and Virendra Singh, J

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—These appeal raise similar issues and have been heard together. Special Appeal No.1034 (defective) of 2009 (State of U.P. and others vs. Sunil Kumar Verma and others) has been treated as leading appeal in which submissions in detail have been addressed by the learned counsel for the parties.

2. Special Appeal No.1034 (defective) of 2009 has been filed by the State of U.P. challenging the judgment and order of learned Single Judge dated 4th February, 2009 by which order the writ petition filed by respondents No.1 to 9 (Sunil Kumar Verma and 8 others), retrenched employees of the U.P. State Cement Corporation, praying for quashing the order dated 24th May, 2006 by which their claim for absorption in a Government department was rejected, has been allowed. The writ petitioners in the writ petition had further prayed for a direction to absorb them in accordance with the Uttar Pradesh Absorption of Retrenched Employees of the State Government or Public Corporation in Government Service Rules, 1991 (hereinafter referred to as the 1991 Rules). The writ petition was allowed by the learned Single Judge quashing the order whereby the claim of the

writ petitioners for absorption was rejected and further a direction was issued directing the State Government to absorb the writ petitioners in some department of the State Government in terms of the 1991 Rules.

3. The other special appeals also raise almost similar issue.

4. The special appeals filed by the State of U.P. were barred by time. In some of the appeals delay condonation applications have already been allowed by this Court and in some of the appeals including Special Appeal No.1034 (defective) of 2009 the delay condonation applications are pending consideration. There is delay of 171 days in filing Special Appeal No.1034 (defective) of 2009. The grounds for condonation of delay in the appeals filed by the State are almost similar. In Special Appeal No.1034 (defective) of 2009, the judgment was delivered by the learned Single Judge on 4th February, 2009. The copy of the judgment was received in the office of the State Government on 16th February, 2009. The matter was referred to the Law Department. The Law Department gave permission for filing special appeal on 3rd July, 2009. Thereafter instructions were issued to the competent authority, who contacted the office of the Chief Standing Counsel and in preparation of the appeal some time was taken. Thereafter appeal has been filed. Similar plea for condonation of delay has been taken in other time barred appeals of the State Government. In several appeals, e.g. in Special Appeal No.170 of 2010 (State of U.P. and others vs. Amar Nath and 82 others) there was delay of 246 days and similar ground was taken for condonation of delay, this Court vide its order dated 27th January, 2010 has already allowed the delay condonation application. We are of the view that sufficient grounds have been made out for condonation of delay in the appeals in which delay condonation applications are still pending. The delay condonation applications, which are pending consideration, are allowed.

5. This bunch of special appeals can be divided in four groups. The first group of appeals are the appeals filed by the State of U.P. challenging the judgment and orders of learned Single Judge by which the writ petitions filed by the respondent employees praying for direction for absorption in government service have been allowed, which group of appeals are represented by Special Appeal No.1034 (defective) of 2009. The second group of appeals are Appeal No.219 of 2008 and other appeals in which appeals the employees have come up challenging the order of learned Single Judge by which the writ petitions claiming direction for absorption in government service have been dismissed. The third group of appeals are the appeals arising out of judgments of learned Single Judge by which judgment the writ petitions filed by the retrenched employees of Bhadohi Woollen Mills praying for a direction to absorb them on equivalent post in the department of the State Government pursuant to the order dated 11th November, 2002 of the State Government has been allowed. The said group of appeals are represented by Special Appeal No.1113 (defective) of 2009. The fourth group of the appeals are the appeals filed by the State of U.P. through Secretary, Sugar Cane Development challenging the judgment and order of the

learned Single Judge dated 12th December, 2003 by which the writ petitions filed by the retrenched employees of various Sugar Mills run by the U.P. State Sugar Corporation, were allowed insofar as the employees who were appointed prior to 1st October, 1986 were concerned by issuing a direction for their consideration for absorption under the 1991 Rules, if they accept the retrenchment compensation and obtain a certified in this regard from the Corporation. The said group of appeals are represented by Special Appeal No.165 of 2010.

6. For appreciating the issues raised in these appeals, it is sufficient to note the facts in detail of Special Appeal No.1034 (defective) of 2009 and some relevant facts of other appeals.

7. The facts giving rise to Special Appeal No.1034 (defective) of 2009 are as follows:

The respondents No.1 to 9 were employees of U.P. State Cement Corporation (hereinafter referred to as the Corporation), which was earlier a government company under Section 617 of the Companies Act, 1956. The respondents claimed to have been appointed on different dates between 1978 to 1983 on the post of Clerk/StenoTypist in the Corporation. The High Court passed an order dated 8th December, 1999 for winding up of the Corporation. Notice for discharge was issued to the employees of the Corporation. The respondentemployees claimed to have been retrenched with effect from 31st July, 2001. The respondentemployees praying for their absorption in accordance with the 1991 Rules submitted representation dated 16th November, 2001 to the State Government. The respondentemployees filed Writ Petition No.42550 of 2001 claiming that they are entitled to be absorbed in accordance with the 1991 Rules. Learned Single Judge by order dated 26th November, 2002 issued an interim mandamus to absorb the respondentemployees in accordance with 1991 Rules or to show cause. No order for absorption was passed by the State Government and the writ petition was ultimately disposed of on 12th April, 2006 with a direction that in case the respondentemployees file a fresh comprehensive representation before the Secretary, Department of Industrial Development, the same shall be considered and decided in accordance with law. The order of the High Court dated 12th April, 2006 was submitted by the respondents before the State Government. The State Government passed an order on 24th May, 2006 rejecting the claim of the respondentemployees for their absorption. Writ Petition No.51252 of 2006 was filed by the respondentemployees praying for quashing the order dated 24th May, 2006 as well as for a direction in the nature of mandamus to declare Rule 3(1)(i) of the U.P. Absorption of Retrenched Employees of State Government or Public Corporation in Government Service (Rescission) Rules, 2003 as ultra vires and further a mandamus commanding the respondents to absorb the respondentemployees against ClassIII post of the State Government or undertaking in accordance with the 1991 Rules. The writ petition was heard by the learned Single Judge. The respondentemployees before the learned Single Judge placed reliance on an order dated 6th January, 2004

passed by this Court in Writ Petition No.36644 of 2003 (Shailendra Kumar Pandey and others vs. State of U.P. and others) and another order passed in Writ Petition No.36007 of 2004 (Vinod Kumar Kushwaha and another vs. State of U.P. and others) decided on 30th June, 2008. Learned Single Judge vide impugned judgment dated 4th February, 2009 quashed the order dated 24th May, 2006 and directed the Principal Secretary, Department of Industrial Development to absorb the respondentemployees in some department of the State Government in terms of 1991 Rules within a period of three months. Special Appeal No.1034 (defective) of 2009 has been filed challenging the said order dated 4th February, 2009.

8. Brief facts of other appeals are also need to be noted.

9. Special Appeal No.1158 (defective) of 2009 has been filed against the judgment and order dated 30th June, 2008 of learned Single Judge by which the writ petition filed by the respondentemployees has been allowed. The respondent No.1 was appointed on 15th May, 1986 and respondent No.2 was appointed on 24th May, 1986 in the Corporation. The respondentemployees claimed to have submitted representation. A writ petition being Writ Petition No.28405 of 1999 is claimed to have been filed by respondent No.2 styled as Association of Cement Corporation through Members Ajeet Kumar and others, which was disposed of on 29th July, 1999 directing the Chief Secretary to pass appropriate order. In pursuance of the said order, the State Government by order dated 3rd April, 2000 decided the representation taking the stand that the employees of three units of the Corporation have not yet been declared retrenched employee, hence no steps for absorption could be taken. The respondentemployees again claim to have submitted some representation on 14th February, 2003. It appears that a writ petition being Writ Petition No.11488 of 2004 was filed by respondent No.1 which was disposed of on 22nd March, 2004 permitting the respondentemployees to file fresh representation. The said representation was decided on 21st July, 2004 rejecting the representation against which order Writ Petition No.36007 of 2004 has been filed praying for quashing the order dated 21st July, 2004 and further for a mandamus directing the respondents to absorb the writ petitioners. The said writ petition has been allowed on 30th June, 2008 quashing the order dated 21st July, 2004 and direction was issued to the State Government to absorb the respondentemployees in some department of the State Government in terms of the 1991 Rules. Against the said order Special Appeal No.1158 (defective) of 2009 has been filed by the State of U.P.

10. Special Appeal No.1068 (defective) of 2009 has been filed against the judgment and order dated 19th May, 2009 by which order the writ petition filed by the respondentemployees was allowed quashing the order dated 7th June, 2006 passed by the State Government rejecting the representation of the respondentemployees claiming absorption. Claiming absorption the respondentemployees had filed Writ Petition No.7415 of 2005, which was disposed of by order dated 21st February, 2006 directing the Secretary,

Department of Industries to decide the representation of the respondentemployees. The said representation was rejected on 7th June, 2006 against which writ petition was filed and allowed vide judgment and order dated 19th May, 2009.

11. Special Appeal No.1108 (defective) of 2009 has been filed against the judgment and order dated 20th October, 2008 by which order the writ petition filed by respondents No.1 to 7 was allowed directing the State Government to consider the case of the respondentemployees for absorption in accordance with 1991 Rules. The respondentemployees claim to have filed Writ Petition No.15074 of 2006 (Sankatha Prasad Singh and others vs. State of U.P. and others), Writ Petition No.19235 of 2006 (Rajendra Prasad and others vs. State of U.P. and others) and Writ Petition No.15076 of 2006 (Vijay Pal Singh and others vs. State of U.P. and others), which were disposed of by this Court directing the Stateappellants to consider the representation. The State Government in pursuance of the orders passed in the aforesaid writ petitions rejected the representation by orders dated 7th August, 2006, 7th June, 2006 and 11th May, 2006 respectively. Challenging the said orders, Writ Petition No.53276 of 2008 (Ram Pyare and others vs. State of U.P. and others) has been filed which was allowed vide judgment and order dated 20th October, 2008.

12. Special Appeal No.1055 (defective) of 2009 has been filed challenging the order dated 4th March, 2009 by which order Writ Petition No.28002 of 2006 (Amaresh Chand Dubey vs. State of U.P. and others) has been allowed. By Writ Petition No.28002 of 2006, the respondentemployees had prayed for quashing the order dated 23rd March, 2006 by which order the representation of the respondentemployees claiming absorption was rejected. The said decision was taken by the State Government in pursuance of the order dated 21st February, 2006 passed in Writ Petition No.34438 of 1999.

13. Special Appeal No.90 (defective) of 2010 has been filed against the judgment and order of learned Single Judge dated 11th August, 2008 by which order the writ petition was disposed of in terms of the order dated 17th January, 2007 passed in Writ Petition No.22728 of 2006 (Vikramaditya Pandey and others vs. State of U.P. and others). The respondentemployees claimed to be employees of the Corporation. They claimed absorption and aggrieved by the inaction filed Writ Petition No.19235 of 2006 (Rajendra Prasad and others vs. State of U.P. and others) and Writ Petition No.38940 of 2008 (Ram Iqbal Singh and others vs. State of U.P. and others), which were disposed of directing for taking decision on the claim of the respondentemployees. By orders dated 10th June, 2009 and 6th July, 2006 the representations for absorption were rejected by the State Government against which writ petitions were filed which were disposed of on 11th August, 2008.

14. Special Appeal No.114 (defective) of 2010 has been filed against the judgment and order dated 20th October, 2008 passed in Writ Petition No.53429 of 2008 (Gyan Shanker vs. State of U.P. and others). The respondentemployees

claimed to have submitted a representation on 16th June, 2008, which according to them was not decided, hence a writ of mandamus was sought commanding the Stateappellants to absorb the respondentemployees as Law Officer in the department of the State Government or any Corporation or Nagar Nigam, which writ petition has been allowed on 20th October, 2008.

15. Special Appeal No.602 of 2010 has been filed against the judgment and order dated 24th July, 2009 passed in Writ Petition No.36899 of 2009 by which order the writ petition was allowed, the order dated 22nd July, 2004 was quashed and a direction was issued to absorb the respondentemployees in accordance with the 1991 Rules. The respondentemployees claimed to have filed Writ Petition No.28405 of 1999 which was disposed of on 22nd March, 2004 directing the Stateappellants to decide the matter afresh in pursuance of which an order was passed on 21st July, 2004 rejecting the claim of the respondentemployees. By the writ petition direction was sought for absorbing the respondentemployees in any department of the Government or in any corporation or Nagar Nigam.

16. Special Appeal No.603 of 2010 has been filed against the judgment and order dated 4th August, 2009 passed in Writ Petition No.35599 of 2005 allowing the writ petition by issuing a direction to the Stateappellants to absorb the respondentemployees under the 1991 Rules. The respondentemployees claimed to be appointed on GroupC/GroupD posts. They claimed to have made a representation on 9th January, 2005 claiming absorption and thereafter filed a writ petition seeking direction. The writ petition having been allowed on 4th August, 2009 relying on the judgment and order dated 6th January, 2004 passed in Writ Petition No.36644 of 2003 (Shailendra Kumar Pandey and others vs. State of U.P. and others), this special appeal has been filed.

17. Special Appeal No.195 (defective) of 2010 has been filed against the judgment and order dated 11th August, 2009 passed in Writ Petition No.41058 of 2009 by which order the writ petition was disposed of in terms of the judgment and order dated 17th January, 2007 passed in Writ Petition No.22728 of 2006 (Vikramditya Pandey and others vs. State of U.P. and others).

GroupII

18.Special Appeal No.219 (defective) of 2008 has been filed against the judgment and order dated 9th January, 2007 passed in Writ Petition No.1473 of 2006 (Prabhu Nath Prasad and others vs. State of U.P. and others). The facts in detail of this case, which is second group of appeals where the writ petition claiming absorption has been dismissed, are need to be noted. Writ Petition No.1473 of 2006 has been filed by Prabhu Nath Prasad and six others praying for a writ of mandamus directing the respondents to decide the representation filed by the appellantemployees by speaking order. The case of the appellantemployees in the writ petition was that they were employees of Chunar Cement Corporation, which was closed. They had earlier filed Writ Petition

No.26888 of 2000, which was disposed of on 18th January 2005 permitting the petitioners to submit a detailed representation enclosing copy of various judgments regarding providing of alternate appointment and the State of U.P. was directed to pass a detailed reasoned order. The appellanteemployees in the writ petition had relied on various orders passed by this Court. The appellanteemployees had also relied on various orders of the State Government by which certain employees were absorbed. Learned Single Judge after hearing the parties took a view that 1991 Rules having been rescinded by 2003 Rules, the right of the retrenched employees to be considered for absorption under the 1991 Rules stands terminated, hence the writ petition is devoid of any substance and dismissed. The appellanteemployees has filed by the appeal challenging the order of learned Single Judge.

19. Special Appeal No.130 (defective) of 2010 has been filed by Prabhat Narain Singh challenging the judgment and order dated 17th January, 2007 by which order Writ Petition No.25040 of 2006 filed by the appellanteemployee has been dismissed in view of the judgment and order of the date in Writ Petition No.25037 of 2006 (Suresh Chand Vaishya vs. State of U.P. and others). Writ Petition No.25037 of 2006 was filed challenging the order dated 23rd March, 2006 passed by the State Government by which the claim of the petitioner of that writ petition for absorption was rejected.

20. Special Appeal No.131 (defective) of 2010 has been filed against the judgment and order dated 17th January, 2007 passed in Writ Petition No.37325 of 2006 by which the writ petition was dismissed following the earlier order passed in Writ Petition No.25037 of 2006 (Suresh Chand Vaishya vs. State of U.P. and others). By the writ petition, the appellanteemployees had prayed for quashing the order dated 29th March, 2006 by which the claim of the appellanteemployees for absorption was rejected.

21. Special Appeal No.132 (defective) of 2010 has been filed against the judgment and order dated 17th January, 2007 by which the writ petition filed by the appellanteemployee challenging the order dated 23rd March, 2006 passed by the State Government rejecting the claim of the appellanteemployees for absorption was dismissed. Learned Single Judge took the view that there is nothing on record to show that appellanteemployees were appointed against any post in the Corporation. It was held that they are not entitled to the benefit of absorption under the 1991 Rules. In view of the above, learned Single Judge refused to exercise discretion in favour of the appellanteemployees.

22. Special Appeal No.133 (defective) of 2010 has been filed against the judgment and order dated 17th January, 2007 passed in Writ Petition No.26390 of 2006 (Ashok vs. State of U.P. and others) dismissing the writ petition following the judgment and order of the date passed in Writ Petition No.25037 of 2006. The appellanteemployee in the writ petition had challenged the order dated 6th January, 2006 by which the claim of the appellanteemployee for absorption was rejected.

23. Special Appeal No.134 (defective) of 2010 has been filed against the judgment and order dated 17th January, 2007 passed in Writ Petition No.25039 of 2006 (Kesh Raj Singh vs. State of U.P. and others) dismissing the writ petition following the judgment and order of the date passed in Writ Petition No.25037 of 2006 (Suresh Chand Vaishya vs. State of U.P. and others). The appellanteemployee had filed the writ petition challenging the order dated 23rd March, 2006 by which the claim of the appellanteemployee for absorption was rejected.

GroupIII

24. Special Appeal No.1113 (defective) of 2009 has been filed against the judgment and order dated 11th September, 2008 passed in Writ Petition No.45102 of 2008 allowing the writ petition directing the respondentauthorities to absorb the writ petitioners in any vacancy of GroupC post in accordance with the 1991 Rules. The appellanteemployees by the said writ petition had prayed for a direction to consider and issue order of absorption in their favour in the State Government department pursuant to the order dated 11th November, 2002 issued by the State Government. The order dated 11th November, 2002 was an order issued by the State Government by which the employees of Bhadohi Woollen Mill were to be considered on the conditions as enumerated therein. The writ petition was disposed of on 11th September, 2008 against which appeal has been filed.

25. Special Appeal No.954 of 2009 has been filed against the judgment and order dated 4th August, 2008 passed in Writ Petition No.40510 of 2005. The said writ petition was filed by 66 petitioners praying for a writ of mandamus commanding the respondents to consider and issue order of absorption in favour of the petitioners in various State Government departments pursuant to the order dated 11th November, 2002 issued by the State Government and the judgments given by the Courts. The order dated 11th November, 2002 was an order of the State Government laying down criteria for considering absorption of the employees of Bhadohi Wollen Mill. The writ petition was allowed directing to consider the case of the writ petitioners for absorption on GroupC posts in accordance with the 1991 Rules against which order the appeal has been filed.

26. Special Appeal No.1896 of 2009 has been filed against the judgement and order dated 21st October, 2008 passed in Writ Petition No.54537 of 2008 by which the writ petition was allowed and a mandamus was issued to absorb the petitioners in any vacancy on GroupC post in accordance with 1991 Rules.

GroupIV

27. Special Appeal No.165 of 2010 [Special Appeal (defective) No.1061 of 2004] has been filed by the State of U.P., Secretary Karmik Anubhag, U.P. State Sugar Corporation Ltd. and General Manager, Rampur Unit, U.P. State Sugar Corporation Ltd., Rampur challenging the judgment and order of the learned Single Judge dated 12th December, 2003 passed in Writ Petition No.15459 of

2002 (Lalit Kumar Bammi and others vs. State of U.P. and others). Brief facts giving rise to this appeal are; the U.P. State Sugar Corporation Limited is owned and controlled by the State Government. The Corporation has been running and managing various sugar mills in the State of Uttar Pradesh. The Corporation suffered huge losses. The Corporation was declared as sick industry. The B.I.F.R. sanctioned a rehabilitation scheme for rehabilitating its units. It was proposed that 11 closed units shall be transferred to newly created subsidiary company of the Corporation and the same shall be privatised in phased manner. The employees of the closed units were given an invitation to retire voluntarily. The 11 units were closed down finally in phased manner (vide Government orders dated 8.9.1998 and 12.11.1999). Apart from 11 units of the Corporation 8 more units were declared unviable in the year 2003. Writ Petition No.15459 of 2002 (Lalit Kumar Bammi and 69 others vs. State of U.P. and others) was filed by permanent and seasonal employees of the Meerut Unit of the Corporation as the unit was closed by order dated 12.11.1999. The retrenchment notice dated 15th March, 2002 was served individually on 95 employees and they were retrenched with effect from 15.4.2002. The case of the writ petitioners was that the Chairman of the Corporation represented to the Government that employees of the Mills, which have been closed down, be not terminated and instead they shall be allowed to continue in service and absorbed in other functional units of the Corporation. The validity of the retrenchment notice was also challenged on the ground of contravention of Section 6N of the U.P. Industrial Disputes Act, 1947. The writ petitioners claimed that they had right to be absorbed in accordance with the 1991 Rules. The learned Single Judge held that the employees have no right to be absorbed in the running units of the Corporation and insofar as challenge to the retrenchment notice is concerned, which involved determination of question of fact, the remedy under the industrial law was directed by the availed by the workmen. The learned Single Judge, however, in respect of the employees, who were appointed before 1st October, 1986, directed consideration of their claim for absorption under the 1991 Rules, if they accept the retrenchment compensation and obtain a certificate in this regard from the Corporation. Certain writ petitioners, who had filed second writ petition, were not granted any relief and their writ petitions were dismissed. By common judgment and order dated 12th December, 2003 the learned Single Judge disposed of several writ petitions including Writ Petition No.15459 of 2002.

28. Against the judgment and order dated 12th December, 2003 deciding bunch of writ petitions other special appeals, being Special Appeal No.170 of 2010 has been filed challenging the judgment and order insofar as Writ Petition No.17847 of 2002 (Amar Nath and 82 others vs. State of U.P.) is concerned, which writ petition had been filed by permanent and seasonal employees of the Rampur Unit of the Corporation, which was closed down with effect from 17th November, 1999; Special Appeal No.169 of 2010 has been filed challenging the judgment and order insofar as Writ Petition No.15781 of 2002 (Rohtas Kumar and 14 others vs. State of U.P. and others) is concerned, which writ petition was filed by

permanent and seasonal employees of the Meerut Unit of the Corporation praying for similar relief; Special Appeal No.168 of 2010 has been filed challenging the same judgment and order insofar as Writ Petition No.15125 of 2002 is concerned, which writ petition was filed by the permanent and seasonal employees of the Rampur Unit of the Corporation praying for the similar relief and Special Appeal No.167 of 2010 has been filed challenging the same judgment and order insofar as Writ Petition No.19043 of 2002 (Qumar Khan and others vs. State of U.P. and others) is concerned, which writ petition was filed by the permanent and seasonal employees of the Rampur Unit of the Corporation praying for the similar relief.

29. The issues, which have been raised in all above special appeals, are almost similar. The appeals filed by the State of U.P. challenge the judgment of the learned Single Judge directing the State Government to absorb the writ petitioners in accordance with the 1991 Rules. The special appeals, which have been filed by the retrenched employees (appeals relating to GroupII) are the appeals which challenge the judgment and order of learned Single Judge by which the writ petition of the retrenched employees praying for similar relief has been dismissed. In the last group of appeals, which relate to seasonal and permanent employees of the units of U.P. State Sugar Corporation, all reliefs have been refused except a direction to the State of U.P. to consider the claim of the writ petitioners for absorption in accordance with the 1991 Rules provided the employees accept the retrenchment compensation and obtain retrenchment certificate.

30. We have heard Sri M.C. Chaturvedi, learned Chief Standing Counsel, Sri M.S. Pipersenia, learned Additional Chief Standing Counsel appearing for the appellants in the appeals filed by the State, assisted by Dr. Y.K. Srivastava, Standing Counsel. Dr. Y.K. Srivastava has also been heard in the appeals arising out of writ petitions filed by the permanent and seasonal employees of the U.P. State Sugar Corporation. Learned counsel for the writ petitionerappellants, Sri K.C. Vishwakarma, has appeared in Special Appeal No.219 (defective) of 2008 (Prabhu Nath Prasad and others vs. State of U.P. and others). Sri Vishwakarma has also appeared on behalf of the respondentwrit petitioners in some of the appeals, other learned counsels appearing on behalf of the respondentwrit petitioners have also been heard. Sri Ashok Mehta has appeared for official liquidator.

31. Learned Chief Standing Counsel appearing on behalf of the Stateappellants has contended that Rule 3 of the 1991 Rules did not confer any right on the retrenched employees to claim absorption in government service, rather it was a provision enabling the Government to consider such retrenched employees for absorption on terms and conditions as provided for in the notified orders issued under Rule 3 of the 1991 Rules. He contends that the right for consideration for absorption can be claimed only when a notified order is issued under Rule 3 of the 1991 Rules. He submits that no notified order having been issued by the

Government with regard to retrenched employees of U.P. State Cement Corporation or U.P. State Sugar Corporation, their employees have no right to claim absorption. He further contends that the right of consideration, if any, came to an end after enforcement of the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Service (Rescission) Rules, 2003 (hereinafter referred to as the Rescission Rules 2003) with effect from 8th April, 2003. It is submitted that after the Rescission Rules 2003, no right of absorption can be claimed by any of the retrenched employees and only benefit available to such retrenched employees is relaxation in upper age limit for direct recruitment to such Group C and Group D posts as provided in Rule 3(2) of the Rescission Rules 2003. Reliance has also been placed on the provisions of the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Service (Rescission of Rules) Act, 2009 under which Act the 1991 Rules have been rescinded with effect from 9th May, 1991 retrospective taking away the right of consideration, if any, and saving only those employees who were absorbed during the period 9th May, 1991 to 8th April, 2003.

32. Learned Chief Standing Counsel submits that the writ petitions have been allowed by the learned Single Judge without considering the effect of Rescission Rules 2003. He contends that judgment of learned Single Judge in Shailendra Kumar Pandey vs. State of U.P. and others (Writ Petition No.36644 of 2003, decided on 6.1.2004) could not have been relied by the writ petitioners due to two reasons, firstly the said judgment was based on its own fact and secondly the effect of the Rescission Rules 2003 was not correctly appreciated in the said judgment. He further contends that Division Bench judgments relied by learned counsel for the writ petitioners in State of U.P. vs. Shailendra Kumar Pandey and others (Special Appeal No.618 of 2004, decided on 20th November, 2004) as well as in State of U.P. vs. Mukund Lal (Special Appeal No.(869) of 2004, decided on 14th October, 2004) at best laid down that the direction for absorption of the employees issued by the learned Single Judge is to be given effect to strictly in accordance with Rule 3(1) of the 1991 Rules. He further contends that the Division Bench in the aforesaid cases did not enter into consideration of the consequence of Rescission Rules 2003, hence no ratio can be read in those judgments that despite Rescission Rules 2003 employees were entitled for consideration for absorption. Referring to the judgment of the Apex Court in Civil Appeal No.788 of 2006 (State of U.P. and another vs. Mukund Lal Singh, decided on 31st January, 2008), it is contended that Apex Court also laid down that absorption has to be made strictly in accordance with Rule 3(1) of the 1991 Rules. Learned Chief Standing Counsel submitted that the learned Single Judge after consideration of consequence of the Rescission Rules 2003 in Prabhu Nath Prasad's case (2007(2) UPLBEC 1307) has rightly laid down that right of consideration has been terminated and in view of the Rescission Rules 2003 writ petitions could not have been allowed. He submits that special appeal filed against the judgment of Prabhu Nath Prasad's case deserves to be dismissed

affirming the view taken by the learned Single Judge.

33. Learned Chief Standing Counsel has further contended that even in some cases pertaining to cement corporation and other corporations an order for absorption has been passed by the State Government that cannot be made basis for issuing direction in favour of the writ petitioners since orders for absorption of certain employees of U.P. State Cement Corporation were issued by the State under the orders passed by this Court and Apex Court including the orders passed by the contempt court. It is submitted that there is no question of discrimination with the writ petitioners as compared to some employees who have been absorbed under the orders issued by the State Government in obedience to various directions issued by this Court and the Apex Court. It is further contended that the word "may" used in Rule 3(1) of the 1991 Rules cannot be read as "shall" and word "may" is only permissive enabling the State Government to consider the case of the retrenched employees for absorption under Rule 3(1) of the 1991 Rules. It is submitted that the rights, if any, as per Rule 3 of the 1991 Rules came to an end after enforcement of the Rescission Rules 2003 as well as the 2009 Act. Reliance has also been placed on the principles as laid down under Section 6 of the General Clauses Act.

34. Learned counsel for the writ petitioners, refuting the above submissions of learned Chief Standing Counsel, has contended that the directions issued by the learned Single Judge directing the State Government to absorb the retrenched employees is perfectly in accordance with law. It is submitted that the Rescission Rules 2003 can have no effect on the accrued rights of the writ petitioners under the 1991 Rules. It is contended that the Rescission Rules 2003 were not retrospective in nature and all the writ petitioners having been retrenched prior to issuance of the Rescission Rules 2003, the rights acquired under the 1991 Rules were subsisting despite the Rescission Rules 2003.

35. Learned counsel appearing for the writ petitioners has submitted that in Shailendra Kumar Pandey's case (supra) learned Single Judge after considering the Rescission Rules 2003 has laid down that the right which accrued to the retrenched employees under the 1991 Rules could not be taken away by the State Government by not considering the cases of the employees and by delaying the consideration for such a long time. It is submitted that against the judgment of learned Single Judge in Shailendra Kumar Pandey's case Special Appeal No.(618) of 2004 was filed which was dismissed by the Division Bench of this Court vide judgment and order dated 20th November, 2004 relying on the judgment and order dated 14th October, 2004 passed in Special Appeal No.(869) of 2004 (State of U.P. and another vs. Mukund Lal Singh). It is submitted that against the judgment of the Division Bench in the case of State of U.P. and another vs. Mukund Lal Singh, civil appeal was filed by the State of U.P. before the Supreme Court, which was dismissed on 31st January, 2008, hence the State cannot be heard in contending that writ petitioners are not entitled for absorption in accordance with the 1991 Rules. It is submitted that several similarly situated

retrenched employees of the U.P. State Cement Corporation and Bhadohi Woollen Mills have already been absorbed by passing different orders by the State Government and offering employment to them in various departments of the State Government. It is not open for the State to deny same right to the writ petitioners and the action of the State is discriminatory and violative of rights guaranteed under Articles 14 and 16 of the Constitution of India. It is submitted that in the special leave petition as well as in the review application filed in Mukund Lal Singh's case (supra), the State has taken the plea based on the Rescission Rules 2003 but still the special leave petition as well as the review application have been rejected by the Apex Court.

36. Learned counsel for the appellanteemployees appearing in the special appeal of Prabhu Nath Prasad and others (special appeals of GroupII), has contended that the judgment of learned Single Judge dismissing the writ petition in Prabhu Nath Prasad's case (supra) deserves to be setaside. It is contended that in the said case the writ petitioners were appointed in the year 1989 by special derive and they were not covered by the 1991 Rules nor the Rescission Rules 2003 were applicable on them, hence there was no occasion for learned Single Judge to adjudicate the issue as has been done in the said case. It is submitted that against the same order of the Government dated 16th May, 2005 other writ petitions were filed in which the order was setaside and the matter was remanded to the State Government for reconsideration.

37. Learned counsel for the parties have referred to and relied on various judgments of this Court and the Apex Court, which shall be referred to while considering the respective submissions in detail.

38. We have considered the respective submissions of the learned counsel for the parties and have perused the records.

39. Following issues emerge for consideration in these appeals from the submissions of learned counsel for the parties and their respective pleadings:

(i) Whether after issuance of the Rescission Rules 2003 the right of absorption/ consideration for absorption of the retrenched employees as per the 1991 Rules still survives or came to an end?

(ii) Whether those employees who were covered by the 1991 Rules and were retrenched employees of the Corporation waiting for their consideration could claim for absorption/consideration after the Rescission Rules 2003 since the 1991 Rules gave them right for consideration for absorption, which cannot be denied, the Rescission Rules 2003 being not retrospective in nature?

(iii) What are the consequences of the 2009 Act on the right of the retrenched employees covered by the 1991 Rules, who could not be absorbed up to 8th April, 2003?

(iv) Whether word "may" used in Rule 3 of the 1991 Rules is to be read as "shall" casting obligation on the State to absorb all the retrenched employees?

(v) Whether in view of the judgment of the learned Single Judge in Shailendra Kumar Pandey's case (supra) against which special appeal as well as the special leave petition in the Apex Court have been dismissed, the writ petitioners were entitled for direction by this Court for absorbing them as per the 1991 Rules?

(vi) Whether the action of the State in absorbing some of the similarly situated employees of the U.P. State Cement Corporation and Bhadohi Woollen Mills and not absorbing the writ petitioners is discriminatory and violative of Articles 14 and 16 of the Constitutions of India?

39. Before considering the above issues, it is necessary to refer to relevant statutory rules governing the field with reference to purpose and object for which such statutory provisions were made. The State of U.P. had constituted various public corporations and the Government companies undertaking various activities within its fold since before several decades. Large number of public sector corporations run by the State suffered losses resulting in their closure. The U.P. Chalchitra Nigam was one of such corporations which was decided to be closed by the State. The State Government taking into consideration the hardship of employees of Chalchitra Nigam issued a Government order on 6th March, 1990 (Annexure 3 to the counter affidavit of the Official Liquidator in Writ Petition No. 22728 of 2006). The State Government decided that only those employees shall be eligible who have been appointed prior to 1st October, 1986. The Government order provided that names of the retrenched employees shall be registered in respective employment offices of the districts according to their seniority and on requisition from employer, their names be forwarded accordingly. It was also provided that the provisions for upper age limit in Government service shall not be applicable to the retrenched employees. Similar Government order was issued on 26th April, 1991 with regard to employees of the U.P. State Horticulture Produce Marketing and Processing Corporation Limited. Similar clause was incorporated in the Government order that the names of retrenched employees shall be kept in separate pool according to seniority and their names shall be forwarded as and when requisitioned by the employers. It is the case of the State Government that service conditions of various Government services were governed by the rule framed under proviso to Article 309 of the Constitution and feeling difficulty in the absorption of employees in the Government service, the 1991 Rules were framed giving overriding effect to the rules enabling the State Government to issue orders laying down terms and conditions for absorption of retrenched employees of various public corporation. The 1991 Rules were framed under proviso to Article 309 of the Constitution to provide for absorption of the retrenched employees of the Government or public corporation in the government service. The 1991 Rules contain only three rules, which are quoted for ready reference as under:

"1. (1) These rules may be called the Uttar Pradesh Absorption of Retrenched Employees of Government of Public Corporations in Government Service Rules, 1991.

(2) They shall come into force at once.

(3) They shall apply to the posts under the rule making power of the Governor of Uttar Pradesh under the proviso to Article 309 of the constitution.

2. Unless there is anything repugnant in the subject or context, the expression

(2) "appointing authority" in relation to any post for which an employee was retrenched means the authority empowered to make appointment to such post:

(a) "Public Corporation" means a body corporate established or constituted by or under any Uttar Pradesh Act except a University or local authority constituted for the purpose of Local Self Government and includes a Government Company within the meaning of Section 617 of the Companies Act, 1956 in which the State Government has preponderant interest:

(b) "retrenched employee" means a person who was appointed on a post under the Government or a public Corporation on or before October 1, 1986 in accordance with recruitment to the post and was continuously working in any post under the Government or such Corporation upto the date of his retrenchment due to reduction in or winding up of, any establishment of Government or the public Corporation, as the case may be, and in respect of whom a certificate of being a retrenched employee has been issued by the appointing authority.

(c) "service rules" means the rules made under the proviso to Article 309 of the Constitution, and where there are no such rules, the executive instructions issued by the Government, regulating the recruitment and conditions of service of persons appointed to the relevant service.

3. (1) Notwithstanding anything to the contrary contained in any other service rules for the time being in force, the State Government may be notified order require the absorption of the retrenched employees in any post or service under the Government and may prescribe the procedure for such absorption including relaxation in various terms and conditions of recruitment in respect of such retrenched employees.

(2) The provisions contained in relevant service rules shall be deemed to have been modified to the extent of their inconsistency with the provisions made in the notified order referred to in Subrule (1)."

40. Reference of Government order dated 11th November, 1993 issued by the State Government has also been made, which was issued in reference to closure of Regional Development Corporations. The Government order dated 11th November, 1993 provided that names of Class "C" and Class "D" employees whose services have come to an end, shall be registered in the respective employment offices in accordance with the seniority and their names be forwarded after requisition is received from the employers. It is the case of the State that absorption of the retrenched employees was having negative impact

on the efficiency in the government departments and was proving counter productive to the aims and object for which aforesaid orders were issued, the State Government had come up with Government order dated 27th May, 1993 stating that there is no justification in future to absorb the employees of the Corporation in the government service since the retrenched employees of the Government companies and Corporation falling within the purview of labour legislation are entitled to certain benefits and certain clarifications were issued thereafter. The Bhadohi Woollen Mills Limited was closed whose employees filed Writ Petition No.17195 of 1998 (Bageshwari Prasad Srivastava and others vs. State of U.P. and others), which was decided on 27th April, 1999 directing the State Government to absorb the employees of Bhadohi Woollen Mills as per the 1991 Rules. The Government order dated 11th November, 2002 was issued providing for procedure for consideration of absorption of the employees of Bhadohi Woollen Mills (Annexure 11 to Writ Petition No.45102 of 2008. Clause 8 of the said Government order provided that those employees, who were working in Group C and Group D post and whose services have come to an end, shall be registered in employment office in separate pool and on requisition from employers their names shall be forwarded accordingly. It was also provided that upper age limit shall not be applicable for such employees for government service. Certain other conditions were also mentioned in the Government order dated 11th November, 2002. Thereafter came the Rescission Rule 2003 with effect from 8th April, 2003 rescinding the 1991 Rules. Rule 3 of the Rescission Rules 2003 provides as under:

"3 (1) Uttar Pradesh Absorption of Retrenched Employees of Government Rescission and Public Corporation in Government Service Rules, 1991 are hereby rescinded and as a consequence of such rescission

(i) the right of a retrenched employee to be considered for absorption accrued under the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Service Rules, 1991 but who has not been absorbed till the date of the commencement of the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission) Rules, 2003 shall stand terminated from such date,

(ii) the orders of the Government issued from time to time prescribing the norms of absorption for retrenched employees of a particular Government department or Public Corporation in Government Service and granting of consequential benefits including pay protection, shall stand abrogated from the date of the commencement of the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission) Rules, 2003

(2) Notwithstanding such rescission

(i) the benefit of pay protection granted to an absorbed retrenched employee prior to the date of the commencement of the Uttar Pradesh Absorption of

Retrenched Employees of Government or Public Corporations in Government Service (Rescission) Rules, 2003 shall not be withdrawn,

(ii)a retrenched employee covered by the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Service Rules, 1991 prior to the date of the commencement of the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission) Rules, 2003, but who has not been absorbed till such date shall be entitled to get relaxation in upper age limit for direct recruitment to such Group "C" and Group "D" posts which are out side the purview of the Uttar Pradesh Public Service Commission to the extent he has rendered his continuous services in substantive capacity in the concerned Government Department or Public Corporation in completed years."

41. The State Legislature thereafter enacted the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission of Rules) Act, 2009, which was published in the U.P. Gazette Extra dated 27th August, 2009. The said 2009 Act was enacted to provide for rescission ab initio of the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991. The statement of object and reasons of the 2009 Act are as under:

"Statement of Objects and Reasons. For the absorption of retrenched employees of Government or Public Corporations the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991 was framed. Many employees of the Government or Public Corporations who had not been declared as retrenched employees filed writ petitions for their absorption under the said rules in Group ""A"" and Group ""B"" posts. According to the Government policy, such retrenched employees were not eligible to be absorbed in posts falling within the purview of the Uttar Pradesh Public Service Commission. During the course of time the problem of absorption of such employees under the aforesaid rules on posts falling within the purview of the Uttar Pradesh Public Service Commission grew acute. The Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991 were, therefore, rescinded vide the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission) Rules, 2003.

The State Government did not get relief in the writ petitions in the court even after publication of the aforesaid rules of 2003. Since it has become necessary to replace the provisions of the aforesaid rules of 2003 by an Act of the State Legislature, it has been decided to enact a law to provide for the rescission ab initio of the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991.

The Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission of Rules) Bill, 2009 is introduced

accordingly."

42. The Rescission Act, 2009 contains only four sections, which are as under:

"1. Short title. This Act may be called the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission of Rules) Act, 2009.

2. Definitions. In this Act, unless the context otherwise requires,

(a) "Absorption Rules" means the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991 published in Government Notification No.3/4/90Karmik291, dated May 9, 1991.

(b) "Public Corporation" means a body corporate established or constituted by or under any Uttar Pradesh Act except a university or local authority constituted for the purpose of local self Government and includes a Government company within the meaning of Section 617 of the Companies Act, 1956 in which the State Government has preponderating interest.

(c) "Rescission Rules" means the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission) Rules, 2003 published in Government Notification No.874/Ka320033/1898, dated April 8, 2003.

(d) "retrenched employee" means a person who was appointed to a post under the Government or a public corporation on or before October 1, 1986 in accordance with the procedure laid down for recruitment to the post and was continuously working in any post under the Government or such corporation up to the date of his retirement due to reduction in, or winding up of, any establishment of the Government or the public corporation, as the case may be, and in respect of whom a certificate of being a retrenched employee has been issued by his appointing authority.

3. Rescission and savings. (1) The Absorption Rules which was rescinded with effect from April 8, 2003 by the Rescission Rules shall be rescinded and be deemed to have been rescinded on May 9, 1991 and consequent upon such rescission,

(a) the retrenched employees except those who were absorbed during the period from May 9, 1991 to April 8, 2003 shall have no claim with regard to their absorption under the said absorption rules or under any Government orders issued in regard thereto and their right regarding absorption accrued under the Absorption Rules shall be deemed terminated.

(b) the orders of the Government issued from time to time prescribing the norms of absorption for retrenched employees of a particular Government Department or Public Corporation in Government Service and granting of consequential benefits including pay protection shall stand revoked ab initio.

(2) Notwithstanding such rescission,

(a) the benefit of absorption provided to the retrenched employees absorbed before April 8, 2003 under the provisions of the Absorption Rules, shall not be withdrawn;

(b) the benefit of pay protection granted to the retrenched employees absorbed prior to April 8, 2003 shall also be maintained;

(c) a retrenched employee covered by the Absorption Rules, but who has not been absorbed till April 8, 2003 shall be entitled to get relaxation in upper age limit for direct recruitment to such Group "C" and Group "D" posts which are outside the purview of the Uttar Pradesh Public Service Commission to the extent he has rendered his continuous service in substantive capacity in the concerned Government department or the Public Corporation in completed years.

4. The Rescission Rules, shall be rescinded and be deemed to have been rescinded on April 8, 2003."

42. It is relevant to note that in some of the writ petitions vires of Rule 3 of the Rescission Rules 2003 was challenged but it appears that no submissions either were raised or pressed before the learned Single Judge when writ petitions were decided. During the course of oral submissions also learned counsel appearing for the writ petitioners did not raise any submission challenging the vires of Rule 3 of the Rescission Rules 2003. The 2009 Act was enacted after the writ petitions were decided by the learned Single Judge but in the appeal learned Chief Standing Counsel has relied on the provisions of the 2009 Act and placed reliance on various provisions of the said Act.

43. Issues No.1, 2 and 3, being interrelated, are taken up for consideration together.

44. The submission, which has been pressed on forefront by the learned Chief Standing Counsel appearing for the Stateappellants, is that after enforcement of the Rescission Rules, 2003 the right of the writ petitioners for absorption as per the 1991 Rules, if any, stood terminated and after 8th April, 2003 no direction could be issued for absorption of the employees in accordance with the 1991 Rules. It is submitted that Rule 3(1) of the 1991 Rules did not provide for automatic absorption of the employees nor any indefeasible right to be absorbed in government service, rather it provided for enabling power with the State Government to lay down terms and conditions for absorption of retrenched employees of any Government Company or Government corporation.

45. Rule 3 of the Rescission Rules 2003 and Section 3 of the 2009 Act are *pari materia*. Rule 3(1) of the Rescission Rules 2003 provides that the 1991 Rules are rescinded and consequence of such rescission is also provided in Rule 3(1)(i) and (ii). According to Rule 3(1)(i) right of retrenched employees to be considered for absorption accrued under the 1991 Rules but who has not been absorbed till the date of commencement of the Rescission Rules 2003 shall stand terminated with

effect from 8th April, 2003.

46. By virtue of subrule (ii) of Rule 3(1) of the Rescission Rules 2003 the orders of the Government issued from time to time prescribing the norms for absorption of retrenched employees of a particular Government department or Public Corporation in Government Service and granting of consequential benefits including pay protection shall stand abrogated from the date of commencement of the Rescission Rules, 2003. However, Rule 3(2) of the Rescission Rules 2003 provides that notwithstanding such rescission the benefit of pay protection granted to an absorbed retrenched employee prior to the date of commencement of the Rescission Rules 2003 shall not be withdrawn. Rule 3(2)(ii) further provides that a retrenched employee covered by the 1991 Rules prior to the date of the commencement of the Rescission Rules 2003, but who has not been absorbed till such date, shall be entitled to get relaxation in upper age limit for direct recruitment to such Group "C" and Group "D" posts which are outside the purview of the Public Service Commission to the extent he has rendered his continuous service in substantive capacity in the concerned Government Department or Public Corporation in completed years. For appreciating the consequence of repeal of the 1991 Rules and provisions as contained in Rule 3 of the Rescission Rules 2003 as well as Section 3 of the 2009 Act, it is relevant to look into principles laid down providing for consequences of the repeal of a statute.

47. Section 6 of the General Clauses Act, 1897 provides for effect of repeal. The U.P. General Clauses Act, 1904 also contain a provision to similar effect in Section 6, which is quoted below:

"6. Effect of repeal. Where any [Uttar Pradesh] Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any remedy, or any investigation or legal proceeding commenced before the repealing Act shall have come into operation in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such remedy may be enforced and any such investigation or legal, proceedings may be continued and concluded, and any such penalty, forfeiture or punishment imposed as if the repealing Act had not been passed."

48. The Apex Court had considered the effect of repeal in the case of State of Punjab vs. Mohar Singh Pratap Singh reported in A.I.R. 1955 S.C. 84. Following

was laid down in paragraph 8 of the said judgment:

"8. Whenever there is a repeal of an enactment; the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is report of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. It is in the light of these principles that we now proceed to examine the facts of the present case."

49. A Constitution Bench of the Apex Court in the case of *Bansidhar and others vs. State of Rajasthan and others*, reported in (1989)2 S.C.C. 557, considered similar provisions contained in Section 6 of the Rajasthan General Clauses Act, 1955. Following was laid down in paragraph 21 and 30 of the said judgment:

"21. When there is a repeal of a statute accompanied by re enactment of a law on the same subject, the provisions of the new enactment would have to be looked into not for the purpose of ascertaining whether the consequences envisaged by Sec. 6 of the General Clauses Act ensued or not. Sec. 6 would indeed be attracted unless the new legislation manifests a contrary intention but only for the purpose of determining whether the provisions in the new statute indicate a different intention. Referring to the way in which such incompatibility with the preservation of old rights and liabilities is to be ascertained this Court in *State of Punjab v. Mohar Singh*, [1955] 1 SCR 893 said:

"..... Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new Law and the mere absence of a saving clause is by itself not material. The provision of Sec. 6 of the General Clauses Act will apply to a case of repeal even if there is simultaneous enactment unless a contrary intention can be gathered from the new enactment. Of course, the consequences laid down in Section 6 of the Act will apply only when a statute or regulation having the force of a statute is actually repealed"

30. For purposes of these clauses the "right" must be "accrued" and not merely an inchoate one. The distinction between what is and what is not a right preserved by Section 6 of the General Clauses Act, it is said, is often one of great fineness. What is unaffected by the repeal is a right "acquired" or "accrued"

under the repealed statute and not "a mere hope or expectation" of acquiring a right or liberty to apply for a right."

50. In the case of *State of Rajasthan vs. Mangilal Pindwal* reported in (1996)5 S.C.C. 60, the Apex Court had occasion to consider repeal of a rule framed under proviso to Article 309 of the Constitution of India. Following was laid down in paragraphs 9, 10 and 11 of the said judgment:

"9. As pointed out by this Court, the process of a substitution of statutory provision consists of two steps; first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. [See : *Koteshwar Vittal Kamath v. K. Rangappa*, (1969) 3 SCR 40, at p. 48 : (AIR 1969 SC 504 at p. 509, Para 6)]. In other words, the substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. As regards repeal of a statute the law is thus stated in *Sutherland on Statutory Construction*:

"The effect of the repeal of a statute where neither a saving clause nor a general saving statute exists to prescribe the governing rule for the effect of the repeal, is to destroy the effectiveness of the repealed Act in futuro and to divest the right to proceed under the statute, which, except as to proceedings past and closed, is considered as if it had never existed". [Vol.1, para 2042, pp. 522523]

10. Similarly in *Crawford's Interpretation of Laws* it has been said :

"Effect of Repeal, Generally. In the first place, an outright repeal will destroy the effectiveness of the repealed Act in futuro and operate to destroy inchoate rights dependent on it, as a general rule. In many cases, however, where statutes are repealed, they continue to be the law of the period during which they were in force with reference to numerous matters". [pp. 640641]

11. The observations of Lord Tenterden and Tindal C.J. referred in the abovementioned passages in *Craies on Statute Law* also indicate that the principle that on repeal a statute is obliterated is subject to the exception that it exists in respect of transactions past and closed. To the same effect is the law laid down by this Court. [See: *Qudrat Ullah v. Municipal Board, Bareilly*, (1974) 2 SCR 530, at p. 539] : (AIR 1974 SC 396 at p. 401)."

51. Section 6 of the U.P. General Clauses Act, 1904 although is not available with regard to repeal of rule framed under proviso to Article 309 of the Constitution of India as laid down by the Apex Court in the case of *Kolhapur Canesugar Works Ltd. and another vs. Union of India and others*, reported in (2000)2 S.C.C. 536 but while considering the consequence of repeal of a Rule, the principles enunciated for effect of repeal under Section 6 has to be kept in mind.

52. The Apex Court again in the case of *Gammon India Ltd. vs. Special Chief Secretary and others*, reported in (2006)3 S.C.C. 354, after considering various earlier judgments of the Apex Court, laid down following in paragraphs 52, 53 and 73 of the said judgment:

"52. The Court examined the ambit and scope of Section 6 of the General Clauses Act, 1897 in Tulloch's case. According to the ratio of the said judgment, the principal underlying Section 6 of the General Clauses Act, 1897 is that every later enactment which supersedes an earlier one or puts an end to an earlier state of the law is presumed to intend the continuance of rights accrued and liabilities incurred under the superseded enactment unless there were sufficient indications expressed or implied in the later enactment designed to completely obliterate the earlier state of the law.

53. In view of the interpretation what follows is absolutely clear that unless a different intention appears in the repealing Act, any legal proceeding can be instituted and continued in respect of any matter pending under the repealed Act as if that Act was in force at the time of repeal. In other words, whenever there is a repeal of an enactment the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears in the repealing statute.

73. The Court examined the ambit and scope of Section 6 of the General Clauses Act, 1897 in Tulloch's case. According to the ratio of the said judgment, the principal underlying Section 6 of the General Clauses Act, 1897 is that every later enactment which supersedes an earlier one or puts an end to an earlier state of the law is presumed to intend the continuance of rights accrued and liabilities incurred under the superseded enactment unless there were sufficient indications expressed or implied in the later enactment designed to completely obliterate the earlier state of the law. In view of the interpretation what follows is absolutely clear that unless a different intention appears in the repealing Act, any legal proceeding can be instituted and continued in respect of any matter pending under the repealed Act as if that Act was in force at the time of repeal. In other words, whenever there is a repeal of an enactment the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears in the repealing statute."

53. The Apex Court in A.I.R. 1980 S.C. 77, M.S. Shivananda vs. the Karnataka State Road Transport Corporation and others, had occasion to consider the consequence of repeal in context of absorption of employees. In the aforesaid case the Karnataka Contract Carriages (Acquisition) Ordinance, 1976 was promulgated with the object of acquiring contract carriages operating in the State. Subclause (3) of Clause 20 of the Ordinance provided for absorption of certain categories of employees of contract carriage operators in the service of the Corporation. It also provided the ratio for absorption for different categories of employees that were entitled to be absorbed in the service of Corporation. The Ordinance was repealed by the Act and it reenacted the provisions of the repealed Ordinance with a saving clause in subsection (2) of Section 31 for preservation of anything done or action taken. The Act was substantially in similar terms except for the difference that the ratio prescribed by proviso to subclause (3) of Clause 20 of the Ordinance, which laid down the categories of

persons who could be absorbed in the service of the corporation, was substantially altered and a new ratio was inserted in the proviso to subsection (3) of Section 19 of the Act. The conductors, who were entitled to be absorbed under the Ordinance, were deleted from the Act. Clause 20(3) of the Ordinance as well as Section 19(3) of Section 31(2) of the Act are quoted below:

"20(3). Every person who is a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) and has been immediately before the commencement of this Ordinance exclusively employed in connection with the acquired property, shall, on and from the notified date, become an employee of the corporation on the same terms and conditions applicable to the employees holding corresponding posts in the corporation. Any person not willing to become such an employee of the corporation shall be entitled to retrenchment compensation as provided in the Industrial Disputes Act.

Provided that the number of workmen that shall become employees of the Corporation under this subsection shall not exceed the following scale, the juniormost being excluded :

Scale per vehicle

1. Drivers ... 1.5
2. Conductors ... 2.65
3. Supervision ... 0.125?
4. Higher Supervision Staff and Managers.. 0.075
5. Ministerial and Secretariat staff ... 0.8
6. Technical staff including Foreman ... 2.75"

* Line staff and checking Inspectors."

54. It was contended before the Apex Court that the employees of contract carriage operators were automatically absorbed by virtue of Ordinance and the repeal of the Ordinance and reenactment does not have effect any effect on their right to be absorbed. Following was laid down in paragraphs 12, 13, 14 and 15 of the said judgment:

"12. In considering the effect of an expiration of a temporary Act, it would be unsafe to lay down any inflexible rule. It certainly requires very clear and unmistakable language in a subsequent Act of the legislature to revive or recreate an expired right. If, however, the right created by the statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired. In order to ascertain whether the rights and liabilities under the repealed Ordinance have been put an end to by the Act, "the line of enquiry would be not whether", in the words of Mukherjea J. in *State of Punjab v. Mohar Singh*, (1955) 1 SCR 893, "the new Act" expressly keeps alive old rights and liabilities under the repealed

Ordinance but whether it manifests an intention to destroy them". Another line of approach may be to see as to how far the new Act is retrospective in operation.

13. It is settled both on principle and authority, that the mere right existing under the repealed Ordinance, to take advantage of the provisions of the repealed Ordinance, is not a right accrued. Subsection (2) of S. 31 of the Act was not intended to preserve abstract rights conferred by the repealed Ordinance. The legislature had the competence to so restructure the Ordinance as to meet the exigencies of the situation obtaining after the taking over of the contract carriage services. It could reenact the Ordinance according to its original terms, or amend or alter its provisions.

14. What were the "things done" or "action taken" under the repealed Ordinance ? The High Court rightly observes that there was neither anything done nor action taken and, therefore, the petitioners did not acquire any right to absorption under subcl. (3) to Cl. 20. The employees of the former contract carriage operators in normal course filled in the pro forma giving their service particulars and reported to duty. This was in the mere "hope or expectation" of acquiring a right. The submission of these "call reports" by the employees did not subject the Corporation to a corresponding statutory obligation to absorb them in service. As a matter of fact, nothing was done while the Ordinance was in force. The Act was published on March 12, 1976. On May 29, 1976, the Corporation sent up proposals for equation of posts to be filled in by the employees of the former contract carriage operators. The meeting of the Committee set up by the Government for laying down the principles for equation of posts and for determination of inter se seniority, met on June 2, 1976. The Committee decided that even in the case of helpers/cleaners, there should be a "trade test" and the staff cleared by the Committee for the post of helper "B", helper "A" and assistant artisans should be on the basis of their technical competence, experience, ability etc. The Committee also decided that all other employees of contract carriage operators, who were eligible for absorption, should be interviewed by that Committee for the purpose of absorption on the basis of experience, ability, duties and responsibilities. These norms were not laid down till June 2, 1976. Till their actual absorption, the employees of the erstwhile contract carriage operators had only an inchoate right.

15. The distinction between what is, and what is not a right preserved by the provisions of S. 6 of the General Clauses Act is often one of great fineness. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere "hope or expectation of", or liberty to apply for, acquiring a right. In *Director of Public Works v. Ho Po Sang*, (1961) 2 All ER 721 (PC) Lord Morris speaking for the Privy Council, observed:

"It may be, therefore, that under some repealed enactment, a right has been given, but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction

between an investigation in respect of a right and an investigation which is to decide whether some right should be or should not be given. On a repeal the former is preserved by the Interpretation Act. The latter is not." (Emphasis supplied).

It must be mentioned that the object of S.31 (2) (i) is to preserve only the things done and action taken under the repealed Ordinance, and not the rights and privileges acquired and accrued on the one side and the corresponding obligation or liability incurred on the both side, so that if no right acquired under the repealed Ordinance was preserved, there is no question of any liability being enforced."

55. One more contention that employees of the contract carriage operator acquired vested right for absorption by virtue of subclause (3) of Clause 20 of the Ordinance, which cannot be taken away by proviso to subclause 3 of Section 19, was considered and rejected in paragraph 21 of the said judgment, which is as under:

"21. This is, in our judgment, sufficient for the determination of the appeal. But, as we have formed a clear opinion on the other aspect, we do not hesitate to express that opinion. That contention is of this nature. It is pointed out that the employees of the erstwhile contract carriage operators acquired vested right to absorption in the service of the Corporation by virtue of subcl. (3) to Cl. 20 of the repealed Ordinance with effect from January 30, 1976, which cannot be taken away by the proviso to subsec. (3) of S. 19. Even if contrary to the decision reached by us, it were possible to hold that they had some kind of such right, that right is expressly taken away by the legislature. The contention does not take note of the fact that by subsec. (1) of S.1 the Act was brought into force with effect from January 30, 1976, i.e., the date on which the Ordinance was promulgated. The Act substitutes a "new" proviso in subsec. (3) of S. 19 in place of the old proviso to subcl. (3) to Cl. 20 of the Ordinance, altering the whole basis of absorption. The new proviso is given a retrospective effect, and it now holds the field from the notified date i.e., January 30, 1976. The proviso in subcl. (3) to Cl. 20 laying down a particular ratio of absorption, is pro tanto avoided by an express enactment of a "new" proviso to subsec. (3) of S. 19 which is entirely inconsistent with it. When an Ordinance is replaced by an Act which is made retrospective in operation, anything done or any action taken under the Ordinance stand wholly effaced."

56. It is relevant to note that provisions of subclause 3 of Clause 20 of the Ordinance was obligatory in nature, which provided that every person employed in connection with the acquired property from the notified date shall become an employee of the Corporation, still the Apex Court held that the right for absorption shall be subject to various steps and there is no automatic absorption and such a right given under subclause (3) of Clause 20 was only an inchoate right.

57. The case of the writ petitioners in the present appeals cannot be on higher footing as to those employees of the contract carriage operator as considered by the Apex Court in the said judgment.

58. The provisions of Rule 3 of the Rescission Rules 2003 as well as Section 3 of the 2009 Act have to be considered in the light of the principles as enunciated by the Apex Court in the aforesaid cases.

59. Present is a case where the 1991 Rules have been repealed by the Rescission Rules 2003 and side by side new provisions have been enforced. When repeal is followed by fresh legislation on the same subject, the Court has to look into the provisions of the new enactment for the purposes of determining whether they indicate a different intention. The question is not whether the new Act expressly keeps alive old right and liabilities but whether it manifests an intention to destroy them. A perusal of Rule 3 of the Rescission Rules 2003 provides for rescission of the 1991 Rules and consequences of such rescission. Rule 3(1)(i) of the Rescission Rules 2003 expressly provides that the right of retrenched employees to be considered for absorption accrued under the 1991 Rules stands terminated for those who have not been absorbed till the date of commencement of the Rescission Rules 2003. Thus the right for consideration for absorption under the 1991 Rules accrued to a retrenched employee stands specifically terminated by Rule 3(1)(i) of the Rescission Rules 2003.

60. In view of the above, we are unable to accept the submission of learned counsel for the writ petitioners that even after the rescission of the 1991 Rules by the Rescission Rules 2003 the right of consideration which was acquired before rescission of the 1991 Rules continues and even after the Rescission Rules 2003 the employees are entitled for absorption since they had acquired the right prior to the Rescission Rules 2003. The said submission is specifically nullified by the express intendment of the Rescission Rules 2003 as manifested by Rule 3(1)(i).

61. The provisions of Section 3 of the 2009 Act is to the same effect. By the 2009 Act, the 1991 Rules have been rescinded with effect from 9th May, 1991, i.e., retrospectively. Section 3(a) of the 2009 Act specifically provides that retrenched employees except those who were absorbed during the period May 9, 1991 to April 8, 2003 shall have no claim with regard to their absorption under the said absorption rules or under any Government orders issued in regard thereto and their right regarding absorption accrued under the Absorption Rules shall be deemed terminated.

62. In view of Rule 3 of the Rescission Rules 2003 and Section 3 of the 2009 Act making express provisions for terminating the right of consideration of retrenched employees accrued under the 1991 Rules, there is no enforceable right in the retrenched employees to seek mandamus directing the State Government to consider their case for absorption.

63. In view of the foregoing discussions, we are of the considered opinion that

after the Rescission Rules 2003 with effect from 8th April, 2003, the right of retrenched employees for absorption acquired under the 1991 rules stands terminated with effect from 8th April, 2003 and no such right could have been enforced by retrenched employees after expressly terminating their above right with effect from 8th April, 2003. The Rescission Rules 2003 has no retrospective operation but it terminated the right of consideration for absorption acquired under the 1991 Rules with effect from 8th April, 2003, the date of enforcement of the Rescission Rules, 2003. Those retrenched employees, who were absorbed between the period 9th May, 1991 to 8th April, 2003 were clearly saved.

64. Now comes the submissions of learned counsel for the writ petitioners that word "may" used in Rule 3 of the 1991 Rules is mandatory in nature and has to be read as "shall" and it was obligatory for the State Government to issue notified order with regard to employees of the U.P. State Cement Corporation as well as the U.P. State Sugar Corporation and the obligation being mandatory in nature, the State can be commanded to absorb all retrenched employees. Learned counsels for the writ petitioners in support of their submission, have placed reliance on the judgments of the Apex Court in the cases of State (Delhi Admn.) vs. I.K. Nangia and another, reported in A.I.R. 1979 S.C. 1977, Sarla Goel and others vs. Kishan Chand, reported in (2009)7 S.C.C. 658 and State of U.P. vs. Jogendra Singh, reported in A.I.R. 1963 S.C. 1618.

65. Learned Chief Standing Counsel refuting the above submission, has contended that the word "may" used in Rule 3 of the 1991 Rules was only an enabling provision and cannot be read as "shall". It is contended that Rule 3 of the 1991 Rules cannot be interpreted to mean that retrenched employees have right to be absorbed in the Government department and it was obligatory for the State to absorb each and every employee. It is contended that the 1991 Rules were enforced enabling the State to issue notified orders for absorption, overriding the service rules of the Government department, which did not provide for absorption. Reliance has been placed on the judgments of the Apex Court in the cases of Mohan Singh and others vs. International Airport Authority of India and others, reported in (1997) S.C.C. 132 and Dhampur Sugar Mills Ltd. vs. State of U.P. and others, reported in (2007)8 S.C.C. 338.

66. The use of word "may" or "shall" in a particular statute does not invariably mean that wherever word "may" has been used it is directory and wherever word "shall" has been used it is mandatory. The language alone is not decisive and for finding out true meaning and purpose of the word regard must be had to the context, subject matter and object of the statutory provision in question. Following was laid down by the Apex Court in the case of State of U.P. vs. Manbodhan Lal Srivastava, reported in A.I.R. 1957 S.C. 912:

"... The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained not only from the phraseology of the provision, but also by

considering its nature, its design, and the consequences which would follow from construing it the one way or the other."

67. The submission of learned Chief Standing Counsel that the 1991 Rules were framed enabling the State to issue notified orders for absorption of the retrenched employees cannot be read to mean that State with regard to each retrenched employee of the Government Corporation or Public Corporation was obliged to issue notified orders for their absorption. No such intendment can be read in Rule 3(1) of the 1991 Rules.

68. In *State (Delhi Admn.) vs. I.K. Nangia (supra)*, the Apex Court was considering the provisions of Prevention of Food Adulteration Act, 1954. The Apex Court was considering the explanation to Section 17(2) which contained permissive language. It was held that such permissive words imposes a duty upon such a company to nominate a person in relation to different establishments or branches or units. While considering the said provision, following was laid down in paragraph 15 of the said judgment:

"The Explanation lays down the mode in which the requirements of s. 17 (2) should be complied with. Normally, the word "may" implies what is optional, but for the reasons stated, it should in the context in which it appears, mean "must". There is an element of compulsion. It is power coupled with a duty. In Maxwell on Interpretation of Statutes, 11th Edn. at p. 231, the principle is stated thus:

"Statutes which authorise persons to do acts For the benefit of others, or, as it is sometimes said, for the public good or the advancement of justice, have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they "may" or "shall, if they think fit", or, "shall have power", or that "it shall be lawful" for them to do such acts, a statute appears to use the language of mere permission, but it has been so often decided as to have become an axiom that in such cases such expressions may haveto say the leasta compulsory force, and so could seem to be modified by judicial exposition." (Emphasis supplied). Though the company is not a body or authority, there is no reason why the same principle should not apply. It is thus wrong to suggest that the Explanation is only an enabling provision, when its breach entails in the consequences indicated above. It is not left to one's choice, but the law makes it imperative. Admittedly, M/s. Ahmed Oomer Bhoy had not at the material time nominated any person, in relation to their Delhi branch. The matter is, therefore, squarely covered by s. 17 (1) (a) (ii)."

69. The Apex Court in the aforesaid case has laid down that when breach entails the consequences, it is not left to one's choice, but the law makes it imperative. Rule 3(1) of the Rescission Rules 2003 does not provide for any consequence of non absorption of a particular employee.

70. The judgment in *Sarla Goel's case (supra)* was considering the provisions of Section 27 of the Delhi Rent Control Act, 1958, which provided that where the landlord does not accept any rent tendered by the tenant within the time

referred to in Section 26 or refuses or neglects to deliver a receipt referred to therein or there is bona fide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner. Considering the scheme of the Act and specially the scheme of Section 27, the Apex Court laid down following in paragraphs 28 and 29 of the said judgment:

"From a conjoint reading of this provision referred to hereinabove and particularly Section 27 of the Act, in our view, it cannot be doubted that the procedure having been made by the Legislature how the rent can be deposited if it was refused to have been received or to grant receipt for the same. If that be the position, if such protection has been given to the tenant, the said procedure has to be strictly followed in the matter of taking steps in the event of refusal of the landlord to receive the rent or to grant receipt to the tenant. It is well settled that whether the word "may" shall be used as "shall", would depend upon the intention of the Legislature. It is not to be taken that once the word "may" is used by the Legislature in Section 27 of the Act, would not mean that the intention of the Legislature was only to show that the provisions under Section 27 of the Act was directory but not mandatory.

29. In other words, taking into consideration the object of the Act and the intention of the Legislature and in view of the discussions made herein earlier, we are of the view that the word "may" occurring in Section 27 of the Act must be construed as a mandatory provision and not a directory provision as the word "may" , in our view, was used by the Legislature to mean that the procedure given in those provisions must be strictly followed as the special protection has been given to the tenant from eviction. Such a cannon of construction is certainly warranted because otherwise intention of the Legislature would be defeated and the class of landlords, for whom also, the beneficial provisions have been made for recovery of possession from the tenants on certain grounds, will stand deprived of them."

71. The aforesaid judgment was on the provisions and the scheme of the Delhi Rent Control Act, 1958 and the interpretation put by the Apex Court was in the aforesaid context.

72. In State of U.P. vs. Jogendra Singh's case (supra), the Apex Court laid down rules of statutory interpretation with regard to words "may" and "shall". Following was laid down in paragraph 8 of the said judgment:

"8. Rule 4(2) deals with the class of gazetted government servants and gives them the right to make a request to the governor that their cases should be referred to the Tribunal in respect of matters specified in cls. (a) to (d) of subr (1). The question for our decision is whether like the word "may" in R. 4(1) which confers the discretion on the Governor, the word "may" in subr. (2) confers the discretion on him, or does the word "may" in subrule (2) really mean "shall" or "must"? There is no doubt that the word "may" generally does not mean

"must" or "shall". But it is wellsettled that the word "may" is capable of meant, "must" or "shall" in the light of the context. It is also clear that where a discretion is conferred upon a public authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command. Sometimes, the Legislature uses the word "may" out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed. In the present case, it is the context which is decisive. The whole purpose of R. 4 (2) would be frustrated if the word "may" in the said rule receives the same construction as in subr. (1). It is because in regard to gazetted government servants the discretion had already been given to the Governor to refer their cases to the Tribunal that the rulemaking authority wanted to make a special provision in respect of them as distinguished from other government servants falling under R. 4(1) and R. 4(2) has been prescribed, otherwise R. 4(2) would be wholly redundant. In other words, the plain and an ambiguous object of enacting R. 4 2) is to provide an option to the gazetted government servants to request the Governor that their cases should be tried by a Tribunal and not otherwise. The rulemaking authority presumably thought that having regard to the status of the gazetted government servants, it would be legitimate to give such an option to them. Therefore, we feel no difficulty in acceptance the view taken by the High Court that R. 4(2) imposes an obligation on the Governor to grant a request made by the gazetted government servant that his case should be referred to the Tribunal under the Rules. Such a request was admittedly made by the respondent and has not been granted. Therefore, we are satisfied that the High Court was right in quashing the proceedings proposed to be taken by the appellant against the respondent otherwise than by referring his case to the Tribunal under the Rules."

73. In Mohan Singh's case (supra) the Apex Court had occasion to consider the provisions of the Land Acquisition Act, 1894. The Apex Court held that use of word "shall" or "may" is not always decisive, the statutory remedy for violation makes it mandatory. The principles were laid down in paragraphs 17 of the said judgment, which are quoted below:

"17. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word "shall" or "may" depends on conferment of power. In the present context, "may" does not always mean may. May is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with power, it becomes duty to exercise. Where the language of statute creates a duty, the special remedy is prescribed for nonperformance of the duty. In "Craies on Statute Law" (7th Edn.), it is stated that the Court will, as a general rule, presume that the appropriate remedy by common law or mandamus for action was intended to apply. General rule of law is that where a general obligation is created by statute and statutory remedy is provided for violation, statutory remedy is provided for violation, statutory

remedy is mandatory. The scope and language of the statute and consideration of policy at times may, however, create exception showing that legislature did not intend a remedy (generality) to be exclusive. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. Therefore, it is necessary to ascertain the intention. The word "shall" is not always decisive. Regard must be had to the context, subject matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the Court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under Consideration. As stated earlier, the question as to whether the statute is mandatory or directory depends upon the language in which the intent is couched. The meaning and purpose the Act seeks to achieve. In "Sutherland Statutory Construction" (3rd Edn.) Volume 1 at page 81 in paragraph 316, it is stated that although the problem of mandatory and directory legislation is a hazard to all governmental activity, it is peculiarly hazardous to administrative agencies because the validity of their action depends upon exercise of authority in accordance with their charter of existence the statute. If the directions of the statute are mandatory, then strict compliance with the statutory terms is essential to the validity of administrative action. But if the language of the statute is directory only, then variation from its direction does not invalidate the administrative action. Conversely, if the statutory direction is discretionary only, it may not provide an adequate standard for legislative action and the delegation. In "Crawford on the Construction of Statutes" at page 516, it is stated that :

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other"

74. In "Dhampur Sugar Mills" case (supra), the Apex Court was considering the provisions of U.P. Seera Niyam, 1964. Following was laid down in paragraph 36 of the said judgment:

"36. We are unable to subscribe to the above view. In our judgment, mere use of word "may" or "shall" is not conclusive. The question whether a particular provision of a statute is directory or mandatory cannot be resolved by laying down any general rule of universal application. Such controversy has to be decided by ascertaining the intention of the Legislature and not by looking at the language in which the provision is clothed. And for finding out the legislative intent, the Court must examine the scheme of the Act, purpose and object

underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant to the issue."

75. In view of the principles laid down by the Apex Court in the aforesaid cases, we are of the view that the word "may" used in Rule 3 of the 1991 Rules cannot be read as word "shall" but we hasten to add that Rule 3 which gave enabling power to the State to consider for absorption also intended a corresponding right in the employee that his case for consideration for absorption be considered by the State till the 1991 Rules were in force.

76. Now comes the submissions of learned counsel for the writ petitioners that judgments of this Court in Shailendra Kumar Pandey's case (supra) and Bageshwari Prasad Srivastava's case (supra) are holding the field and against both the above judgments rendered by the learned Single Judges the special appeals before the Division Bench of this Court and special leave petition before the Apex Court having been dismissed, the State is bound to follow the ratio of the aforesaid judgments and it is not open for the State to contend in these appeals that writ petitioners are not entitled for any direction for absorption in the Government department. It is relevant to refer to some judgments of this Court and the Apex Court in which issue of absorption of retrenched employees was involved.

77. The first judgment relied by learned counsel for the writ petitioner is the judgment in the case of Bageshwari Prasad Srivastava vs. State of U.P. and others reported in 1999(3) AWC 1956. In the said case, the writ petition was filed by the employees of Bhadohi Woollen Mills, which was declared as a sick company on 27th November, 1995 and subsequently the company was wound up. The Managing Director of the Company has written a letter dated 18th May, 1996 to the Principal Secretary, Industrial Development that there were 323 employees of the Company who, in consequence of winding up, are entitled to be absorbed in accordance with the Government orders. They had come earlier to this Court by filing writ petitions which were disposed of on 15th January, 1998 directing the respondents to consider the claim for absorption of the writ petitioners by a speaking order. The claim of the writ petitioners was rejected on 28th April, 1998. It was said by the Government with regard to ClassIII and ClassIV employees that they could be given preference in direct recruitment provided they had been issued retrenchment certificate, but since no retrenchment certificate was issued by the appointing authority, they cannot be absorbed. The writ petition was allowed by this Court on 29th April, 1999 issuing direction to absorb the writ petitioners/retrenched employees of the Bhadohi Woollen Mills Limited in Government service in accordance with their qualification on ClassIII and ClassIV posts. Against the said judgment Special Appeal No.540 of 1999 was filed, which was dismissed on 19th November, 2001 taking the view that the order of the learned Single Judge does not call for any interference except that such absorption shall be in accordance with Rule 3(1) of the 1991

Rules. A special leave petition being S.L.P. No.5379 of 2002 against the said judgment was also dismissed on 18th March, 2002. The aforesaid judgments were rendered at the time when the Rescission rules, 2003 were not enforced. There was no occasion for consideration of the effect of the Rescission Rules 2003 in the aforesaid judgments and as held above after the Rescission Rules 2003 the right of consideration for absorption and Government orders issued providing for absorption were abrogated. Thus the above judgments does not help the writ petitioners in support of their submission that even after issuance of the Rescission Rules 2003 they are entitled for direction for their absorption.

78. It is to be noted that in pursuance of the order of this Court in Bhadohi Wollen Mills case, the State Government had come up with a Government order dated 11th November, 2002 providing for modalities and conditions of recruitment of retrenched employees in the Government department which only provided for registering the name of retrenched employees in the respective Employment Offices in a separate pool and those names were to be forwarded after receiving request from the employers.

79. The judgment, which has been relied by the learned counsels for the writ petitioners as well as by the learned Single Judges in allowing the writ petitions filed by the retrenched employees, is the judgment of this Court dated 6th January, 2004 passed in Writ Petition No.36644 of 2003 (Shailendra Kumar Pandey and others vs. State of U.P. and others). Shailendra Kumar Pandey and two other employees were retrenched employees of the U.P. State Cement Corporation, which was wound up on 8th December, 1999. Earlier the writ petitioners had filed Writ Petition No.38534 of 2001 relying on the judgment of this Court in Bageshwari Prasad Srivastava's case (supra). The said writ petition was disposed of by this Court on 20th September, 2002 directing the State Government to take appropriate decision in respect of the claim of the writ petitioners, which was already submitted by letter dated 10th September, 2001 within a period of two months. After the aforesaid order of this Court, the claim of the writ petitioners was considered and rejected by order dated 30th June, 2003 on several grounds. One of the grounds for rejecting the claim was that the 1991 Rules have been rescinded by the Rescission Rules 2003 dated 8th April, 2003. Challenging the order dated 30th June, 2003 the writ petition was filed. The learned Single Judge allowed the writ petition. The learned Single Judge in its judgment had also considered the Rescission Rules, 2003. Following observations were made by the learned Single Judge in the said judgment:

"The Absorption Rules, 1991 were rescinded on 8th April, 2003. Petitioners were not only fell within the category of retrenched employees, they had represented and that the respondents were required to consider their rights for absorption within two months, i.e. before the rules were rescinded. Petitioners' right, therefore, crystalised much before the rules were rescinded. The respondents cannot take the benefit of the delay caused by them in considering petitioners' application. The two months' period granted by this Court on 20.9.2002, expired

on 20.11.2002. The delay made by the Secretary (Karmik) Anubhag2, Government of U.P. in deciding the matter, cannot be a ground to refuse the due consideration, required to be made by this Court before the rescission of the rules. The rescission of rules will, therefore, not come in the way of the petitioners in claiming the absorption."

80. Against the above judgment of the learned Single Judge dated 6th January, 2004, Special Appeal No.618 of 2004 (State of U.P. and others vs. Shailendra Kumar Pandey and others) was filed. The said special appeal was dismissed on 20th November, 2004 by following order:

"This Special Appeal stands dismissed in view of our order dated 14.10.2004 passed in Special Appeal No.(869) of 2004 (State of U.P. and another vs. Mukund Lal Singh)."

81. Mukund Lal Singh and others filed Writ Petition No.2786 of 2004 for absorption which was allowed on 27th May, 2004. The State of U.P. filed Special Appeal No.869 of 2004 challenging the order of learned Single Judge issuing direction for considering the writ petitioners for absorption under the 1991 Rules. The Division Bench dismissed the appeal on 14th October, 2004 by following order:

"In view of the averments made in Ground Nos.12 and 13 of the Special Appeal, the appeal is bound to be dismissed as the decision of this Court in Writ Petition No.17195 of 1998 was challenged not only before the Division Bench in Special Appeal but also before Hon"ble Apex Court and the judgment remained intact.

In view of the above, considering the averments made in the affidavit filed in support of the application under section 5 of the Limitation Act for condonation of delay, we condone the delay in filing the appeal but dismiss the Special Appeal on merit.

Mst. Kirtika Singh appears for the respondent.

However, the judgment and order of the learned Single Judge shall be given effect to strictly in accordance with Rule 3(1) of the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991."

82. Against the Division Bench judgment of this Court in Mukund Lal Singh's case (supra), special leave petition was filed in the Supreme Court which was converted into Civil Appeal No.782 of 2006 (State of U.P. and another vs. Mukund Lal Singh) and was dismissed by following order on 31st January, 2008:

"Heard learned counsel for the parties.

In the facts and circumstances of the case, we are not inclined to interfere with the impugned orders.

It is made clear that the directions in the order dated 14th October, 2004, passed

in Special Appeal No.869 of 2004 that the order of the learned Single Judge shall be given effect to strictly in accordance with Rule 3(1) of the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991, shall apply in all these appeals.

I.A. No.7 is permitted to be withdrawn to take such remedy as is available to the applicant under law. I.A. No.5 is permitted to be withdrawn."

83. With regard to judgment of the learned Single Judges, which have been affirmed by the Division Bench of this Court in different special appeals and also by the Apex Court, there cannot be any dispute that the said judgments are binding between the parties and the State has to implement the aforesaid judgments. The special appeal and special leave petition have already been dismissed, thus finality has been attached insofar as parties of the aforesaid cases are concerned. It has also come on the record that several contempt petitions were filed for non compliance of the judgments of this Court, which had become final, and the State has issued various orders for absorption of some of the retrenched employees in obedience of the judgments of this Court and the orders passed in contempt proceedings.

84. The question still remains as to what is the ratio of Shailendra Kumar Pandey's case (supra), which was decided by the learned Single Judge of this Court vide its judgment and order dated 6th January, 2004 and affirmed in special appeal by Division Bench of this Court and in civil appeal by the Apex Court.

85. As noticed above, the learned Single Judge in its judgment dated 6th January, 2004 in Shailendra Kumar Pandey's case (supra) noticed that the 1991 Rules were rescinded on 8th April, 2003 but a view was taken that since the retrenched employees fell within the category of the 1991 Rules and the respondents were required to consider their rights for absorption within two months under the orders of this Court passed on 20th September, 2002, the respondents cannot take the benefit of delay caused by them in considering the claim of the writ petitioners. It was also held that their rights crystalised much before the rules were rescinded. The learned Single Judge further held that two months period expired on 20th November, 2002 and the delay caused by Secretary (Karmik), Government of U.P. cannot be a ground to refuse due consideration required to be made by this Court before the rescission of the rules. The above observation of the learned Single Judge makes it clear that basis of the direction by the Court was non compliance of the earlier direction dated 20th September, 2002 within the time allowed and that was the reason for direction to the State Government to consider the case for absorption. The said directions of the learned Single Judge dated 6th January, 2004 were issued on the special facts of that case.

86. As noted above, the special appeal filed against the judgment and order dated 6th January, 2004 was dismissed following earlier decision of the Division

Bench in Special Appeal No.(869) of 2004. The order passed by the Division Bench of this Court in Special Appeal No.(869) of 2004 has also been quoted above by which decision the special appeal was dismissed with direction that the judgment of learned Single Judge be given effect to strictly in accordance with Rule 3 of the 1991 Rules. While dismissing the special appeal on 14th October, 2004, the Division Bench had not adverted to the consequence of the Rescission Rules 2003. The Division Bench in the aforesaid judgment having not considered or expressed any opinion with regard to the Rescission Rules, 2003, no such ratio can be read in the aforesaid judgment that despite Rescission Rules 2003 the right of retrenched employees, who could not be absorbed till 8th April, 2003, still subsists and can be enforced by a writ petition. In this regard it is useful to refer to the judgment of the Apex Court in the case of Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. and others, reported in (2003)2 S.C.C. 111. Following was laid down in paragraph 59 of the said judgment:

"59. .A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. See Smt. Ram Rakhi v. Union of India and others (AIR 2002 Delhi 458); Delhi Administration (NCT of Delhi) v. Manoharlal (AIR 2002 SC 3088); Haryana Financial Corporation and another v. M/s. Jagdamba Oil Mills and another (2002 (1) JT (SC) 482) and Dr. Nalini Mahajan etc. v. Director of Incometax (Investigation) and others ((2002) 257 ITR 123)."

87. The Apex Court in the case of Delhi Administration (Now Act of Delhi) vs. Manohar Lal, reported (2002)7 S.C.C. 222 has laid down that High Court and all other Courts in the country are ordained to follow and apply law declared by the Apex Court, but that does not absolve them of the obligation and responsibility to find out the ratio of the decision and ascertain the law, if any, so declared from a careful reading of the decision concerned and only thereafter proceed to apply it appropriately to the cases before them. Following was laid down in paragraph 5 of the said judgment:

"5. We have carefully considered the submissions of the learned counsel appearing on either side. Apparently, the learned Judge in the High Court was merely swayed by considerations of judicial comity and propriety and failed to see that merely because this Court has issued directions in some other cases, to deal with the fact situation in those other cases, in the purported exercise of its undoubted inherent and plenary powers to do complete justice, keeping aside even technicalities, the High Court, exercising statutory powers under the Criminal Laws of the land, could not afford to assume to itself the powers or jurisdiction to do the same or similar things. The High Court and all other courts in the country were no doubt ordained to follow and apply the law declared by this Court, but that does not absolve them of the obligation and responsibility to find out the ratio of the decision and ascertain the law, if any, so declared from a careful reading of the decision concerned and only thereafter proceed to apply it

appropriately, to the cases before them. Considered in that context, we could not find from the decisions reported in 1997 (9) SCC 101 (supra) and 2000 (9) SCC 151 (supra) any law having been declared or any principle or question of law having been decided or laid down therein and that in those cases this Court merely proceeded to give certain directions to dispose of the matter in the special circumstances noticed by it and the need felt, in those cases, by this Court to give such a disposal. The same could not have been mechanically adopted as a general formula to dispose of, as a matter of routine, all cases coming before any or all the courts as a universal and invariable solution in all such future cases also. The High Court had no justifying reason to disturb the conclusion of the first appellate court, in this regard."

88. A Division Bench of this Court in Special Appeal No. 233 of 2007 (Subhash Prasad vs. the State of U.P. and others, decided on 15.3.2007) had considered the similar issues pertaining to right under the 1991 Rules and the effect of the Rescission Rules 2003. The appellant in the aforesaid case had filed a writ petition for a direction for absorption under the 1991 Rules. The writ petition was dismissed by the learned Single Judge against which special appeal was filed. In paragraphs 8 and 9 of the said judgment the Division Bench noted Rule 3(1) of the Rescission Rules 2003. The argument of the learned Counsel for the State that after the Rescission Rules 2003 came into force the right under the 1991 Rules came to an end was also noticed. The Division Bench held that at the highest the applicant has to be considered like any other employee but the said right came to an end when the rules were rescinded in 2003. Paragraphs 8 to 17 of the said judgment are quoted below:

"8. In any case, this scheme, which was created under the 1991 rules, was rescinded in 2003 by promulgation of rules known as U.P. Absorption of Retrenchment Employees of Government or Public Corporations in Government Service (Rescission) Rules, 2003.

9. By those rules, the rights under the earlier 1991 rules were specifically rescinded. Rule 3 (1) (i) of this 2003 rules reads as follows:

"3 (1) Uttar Pradesh Absorption of Retrenched Employees of Government Rescission and Public Corporation in Government Service Rules, 1991 are hereby rescinded and as a consequence of such rescission

(i) the right of a retrenched employee to be considered for absorption accrued under the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Services Rules, 1991 but who has not been absorbed till the date of the commencement of the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Services (Rescission) Rules, 2003 shall stand terminated from such date,"

10. Mr. Upadhyay, therefore, submits that when rules of 2003 came up into force, the petitioner's right under the 1991 rules came to an end. There is no provision to absorb the petitioner once 2003 rules came into force.

11. The case of the petitioner is that some others were absorbed from time to time under the earlier rules. He has drawn our attention to the absorption of one Vijay Kumar Pandey by Government order dated 7.7.2001 and some persons belonging to the backlog by a further order dated 27.1.2005. He submits that on a parity, the petitioner must get an absorption similarly.

12. We have considered the submissions of the appellant and as well as of the respondents.

13. For seeking any such parity or any such right, firstly the appellant must fall within the definition of retrenched employee. The petitioner does not fall under that definition.

14. That apart, rule 3 (1) of the earlier rules meant that the persons concerned were to be considered for absorption. It could not be said that each and every one of them must be absorbed. Rule 3 (1) 1991 rules for ready reference is quoted below:

"3 (1) Notwithstanding anything to the contrary contained in any other service rules for the time being in force the State Government may by notified order require the absorption of the retrenched employee in any post or service under the Government and may prescribe the procedure for such absorption including relaxation in various terms and conditions of recruitment in respect of such retrenched employees.

15. This being the position, at the highest, the appellant had to be considered like any other employee. That right came to an end when the rules were rescinded in 2003 rules. Subsequently, there cannot be any specific performance of any such right under the earlier rules which no longer prevail. The appeal is dismissed.

16. The Counsel for the appellant had contended that certain right has crystallized under the earlier rules.

17. As pointed out above, the appellant did not fall within the category of retrenched employee which was covered under the 1991 rules. That apart, the only right under 1991 rules was for being considered for an employment. That being so, such submission can not be accepted."

The above Division Bench in which one of us (Justice Ashok Bhushan) was a member, after considering the Rescission Rules 2003, clearly held that right of consideration, if any, came to an end after the Rescission Rules 2003. The above Division Bench judgment is fully applicable in facts of the present case and we see no reason to take a different view.

89. Now comes the submission of the writ petitioners that there is violation of their rights guaranteed under Articles 14 and 16 of the Constitutions of India since several similarly situated retrenched employees have been absorbed by the State Government relating to Bhadohi Woollen Mills and U.P. State Cement

Corporation. The State has come with the clear stand that absorption orders passed with regard to retrenched employees have been in obedience of various orders of this Court which had become final and consequent to the contempt proceedings. Copies of certain orders issued in obedience of direction of this Court and the contempt proceedings have been filed as Annexure 11, 12, 13 and 13 in Writ Petition No.51252 of 2006 which are on the record in Special Appeal No. 1034 (defective) 2009. On the strength of the said orders, the writ petitioners cannot claim any discrimination since the said orders were passed in obedience of the orders of this Court. The learned Single Judge in Prabhu Nath Prasad's case has taken following view:

"20. Here in pith and substance, notwithstanding the existence of rescission Rules 2003, petitioners are claiming that they be absorbed in similar manner as others have been done. Writ jurisdiction is meant to enforce the rule of law and not to violate the law. Once right of retrenched employee to be considered for absorption has been taken away, by framing statutory rules, and validity of said rules have not at all been questioned, then the mandate/ intention/spirit of the said rules has to be given due respect, and no directives can be issued to violate the Rules. Merely because some incumbents have been offered appointment, under the cover of the orders passed by this Court, will not improve the case of petitioners as two wrongs will not make a thing right, and equality in illegality , is totally against the rule of fair play and demand of petitioner if accepted would be clearly violative of Article 14 and 21 of Constitution of India"

90. We also endorse the above view of the learned Single Judge. We having found that the right of consideration for absorption under the 1991 Rules having come to an end after the Rescission Rules 2003, no mandamus can be issued for enforcing the said right. However, it is relevant to note that under the Rescission Rules 2003 as well as under the 2009 Act certain benefits have been provided to the retrenched employees even after 8th April, 2003. The retrenched employees, i.e. writ petitioners are fully entitled to take the benefit of the aforesaid Rule 3(ii) of the Rescission Rules 2003 and Section 3 (2) of the 2009 Act.

91. The appeals filed by the retrenched employees challenging the order of the learned Single Judge in Prabhu Nath Prasad's case deserves to be and are hereby dismissed in view of the foregoing discussions. Thus all the appeals of GroupI, GroupIII and GroupIV are partly allowed setting aside the directions issued by the learned Single Judge for absorbing the writ petitioners. However, it is directed that retrenched employees of U.P. Cement Corporation, Bhadohi Woollen Mills and U.P. State Sugar Corporation shall be entitled for the benefits as contemplated under Rule 3(ii) of the Rescission Rules 2003 and saved under Section 3(2) of the 2009 Act on Group ""C" and Group ""D" posts.

Orders accordingly.

Parties shall bear their own costs.