
(2006) 02 AHC CK 0233

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 29651 of 2004, 34581, 39708, 45551, 45910, 46305, 49368, 49369, 49370, 49914, 50341, 50342, 50535, 52160, 52508, 53016, 53379, 54163, 54165, 54167, 55138, 55139, 57824, 57834, 57836, 58182, 58184, 58187, 58188, 592

Sukhnandan Lal Vishokhia

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 27-02-2006

Acts Referred:

Constitution of India, 1950 — Article 141

Uttar Pradesh Jal Nigam Services of Engineers (Public Health Branch) Regulations, 1978 — Regulation 31, 37

Uttar Pradesh Water Supply and Sewerage Act, 1975 — Section 3, 37, 37(1), 97

Citation : (2006) 9 ADJ 191 : (2006) 6 AWC 5632 : (2006) 3 UPLBEC 2535

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Akhtar Ali, for the Appellant; Q.H. Siddiqui and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—The question for determination in these petitions is whether the age of retirement of the employees of Local Self Government (Engineering Department) whose services stood transferred to the U.P. Jal Nigam on the appointed date by virtue of Section 3 of the U.P. Water Supply and Sewerage Act would be 58 years or 60 years.

Backgrounds of the case

2. Before entering into the controversy of the case, it may be mentioned here that the matter of enhancement of age of superannuation of the employees of Nigam had come up before a Division Bench of this Court in Civil Misc Writ No. 43770 of 2005 -Harwinder Kumar and Ors. v. Chief Engineer, Karmik and Ors. claiming that they have legal right to continue in service till they attain the age

of 60 years as State Government has enhanced the age of superannuation of its employees from 58 to 60 years. The aforementioned writ petition was dismissed holding that the age of superannuation of employees of Nigam is 58 years. Aggrieved by the judgment of the Division Bench in the aforesaid writ petition, Special Appeal No. 7840 of 2002 Harwinder Kumar and Ors. v. Chief Engineer, Karmik and Ors. was filed, which was allowed by Hon"ble Supreme Court holding that since the petitioners were governed by U.P. Jal Nigam Engineering Public Health Branch Service Regulations, 1978 (hereinafter referred to as "the Regulations of 1978") having been framed in exercise of power u/s 97 of the Act in respect of engineer cadres, Regulation 31 thereof is applicable to them, The operative portion of the judgment of Hon"ble Supreme Court in Harwindra Kumar Vs. Chief Engineer, Karmik and Others, is as under:

For the foregoing reasons, the appeals as well as writ petitions are allowed, orders passed by the High Court dismissing the writ petitions as well as those by the Nigam directing that the appellants of the civil appeals and petitioners of the writ petitions would superannuate upon completion of the age of 58 years are set aside and it is directed that in case the employees have been allowed to continue up to the age of 60 years by virtue of some interim order, no recovery shall be made from them but in case, however, they have not been allowed to continue after completing the age of 58 years by virtue of erroneous decision taken by the Nigam for no fault of theirs, for the remaining period up to the age of 60 years which must be paid to them within a period of three months from the date of receipt of copy of the order by the Nigam. There shall be no order as to costs.

3. During the pendency of the Civil Appeal, a large number of employees of Nigam were served with notice of retirement at the age of 58 years and were retired accordingly. Those employees who had been retired at the age of 58 years in the meantime approached filed these writ petitions claiming that they were entitled to retire from service after attaining the age of 60 years, in view of order dated 18.11.2005 in Civil Appeal No. 7840 of 2002- Harwinder Kumar's case (supra) passed by Hon"ble Supreme Court.

4. In the meantime, review application has been preferred by the Jal Nigam for review of the judgment and order dated 18.11.2005 passed by Hon"ble Supreme Court in Civil Appeal No. 7840 of 2002 was filed by Harwinder Kumar stating that it is not specified as to whether the judgment is applicable only to the parties in that case or to all the employees of the Nigam- present and past ever since 28.11.2001, i.e., the date of notification of amendment made in Rule 56(ka) of U.P. Fundamental Rules enhancing the age of superannuation of Government servants from 58 to 60 years.

5. It may be mentioned here that there are following 15 cadres in U.P. Jal Nigam in respect of whom Service Regulations have been framed:

1. U.P. Jal Nigam Engineer's (Public Health Branch) Service Regulation, 1978
2. U.P. Jal Nigam Subordinate Engineer Service Regulation, 1978

3. U.P. Jal Nigam Finance & Accounts (Officer's) Service Regulation 1978.
4. U.P. Jal Nigam Assistant Research Officer Service Regulation, 1979
5. U.P. Jal Nigam Driller Service Regulation, 1979
6. U.P. Jal Nigam Map Service Regulation
7. U.P. Jal Nigam Ministerial Adhistan Service Regulation
8. U.P. Jal Nigam Sanganak Service Regulation
9. U.P. Jal Nigam Accountant Service Regulation
10. U.P. Jal Nigam Research Service Officer Service Regulation
11. U.P. Jal Nigam Class III Employee Service Regulation
12. U.P. Jal Nigam Hydrological, Geophysical Service Regulation
13. U.P. Jal Nigam Regular Employee (Field) Service Regulation
14. U.P. Jal Nigam (Motor Driver) Service Regulation
15. U.P. Jal Nigam Mechanic Service Regulation.

6. The Service Regulations framed in exercise of powers u/s 97 of the Act have been enforced on different dates after the judgment was rendered by the Hon'ble Supreme Court in the Special Appeal No. 7840 of 2002-Harwinder Kumar (supra) in respect of following five cadres onlyns:

Name of Regulations

1. U.P. Jal Nigam Adhinasth Abhiyantran Seva Niyamavali, 1978
2. U.P. Jal Nigam Vitta Evam Lekha (Adhikari) Seva Viniyamavali, 1978
3. U.P. Jal Nigam Manchitrak Seva Viniyamavali, 1978
4. U.P. Jal Nigam Sanganak Seva Viniyamavali, 1989.
5. U.P. Jal Nigam Chaturth Shreni Karmachari Evam Motor Car Evam Jeep/Truck/Tractor Drivers Seva Viniyamavali, 1980.

7. Since aforesaid common questions of facts and law are involved in these writ petitions, they are decided by this common judgment treating Civil Misc. Writ Petition No. 3883 of 2006- Sukhnandan Vishokia v. State of U.P. and Ors. as the leading case.

Petitioners' contentions:

8. The contention of counsel for the petitioners is that the contentions in their cases is same as in Harwinder Kumar, whose case had been dismissed by this Court hence the petitioners did not file writ petitions at that point of time, However, in view of judgment of Hon'ble Supreme Court in appeal by Harwinder

Kumar holding that employees of Jal Nigam are entitled to continue in service up to the age of 60 years, the petitioners have come in these writ petitions without any further delay after the decision by the Hon''ble Supreme Court in the case of Harwinder Kumar (Supra). As they have been illegally retired and, therefore, technical delay in filing the writ petitions is liable to be condoned.

9. The petitioners further contend that they are legally entitled to continue in service till they attain the age of 60 years and the respondents have legal obligations to allow the petitioners to work till their age of superannuation, i.e., 60 years.

10. It is also the contention of counsel for the petitioners that Nigam has not framed any specific regulation in respect of age of retirement of its employees hence in absence of any specific regulations regarding age of superannuation of the employees of the Nigam the terms and conditions of service which are generally applicable to the State Government employees will be applicable to the employees of the Nigam in view of Section 37 of the Act. He also contends that in view of Office Order dated 30.8.2005 by which the Nigam has extended the age of retirement of its employees from 58 to 60 years a legal right has accrued to them and they are now entitled to retire from service on attaining the age of 60 years hence they had wrongly been retired at the age of 58 years. Reliance, in this regard, has been placed upon the judgment rendered by the Hon''ble Supreme Court in the case of Harwinder Kumar (supra). Counsel for the petitioners has also placed reliance upon a Division Bench decision in Civil Misc. Writ No. 57824 of 2005 wherein this Court has passed interim order permitting the petitioners of that case to continue in service till they are superannuated on attaining the age of 60 years.

Respondents'' case:

11. The respondents have taken the stand that the case of Harwinder Kumar (supra) has been decided by Hon''ble Supreme Court on the ground of Regulations of 1978 which had been framed by the Nigam in respect of only one cadre, i.e., U.P. Jal Nigam Engineers (Public Health Branch) Service Regulations, 1978. Regulation 31 thereof is not applicable to other employees of the Nigam. It is vehemently urged by counsel for the respondents that according to the Government notification dated 28.11.2001, the age of retirement of Government servants has been enhanced from 58 to 60 years after Fundament Rule 56-(Ja) of the U.P. Financial Hand Book was amended which is applicable to the Government servants only. It is stated that the aforesaid Rules have not been adopted by the Board of Directors of Jal Nigam as such, they are not applicable to the employees of the Jal Nigam. Reference in this regard has been made to the letters dated 9.1.2002 and 15.1.2002 issued by the State Government to the Jal Nigam are as under:

Letter dated 9.1.2002 :

^^mRj izns''k dkfeZd vuqHkx&1 ds }kjk tkjh vf/klwpuk la[;k 1098 @d&1

@2001 fnukad 28 uoEcj esa tkjh gkus okys ty fuxe dk dk;kZy; foKfIr dk izLrko

bl dk;kZy; ds Kkr la[;k 765 @iz @t?fu?vuq? fnukad 4 vizSy 1977 ds }kjk fuxe funsZ"kd e.My dh nwljh cSBd ds en la[;k 2-21 }kjk fuxe ds vf/kdkfj;ksa ds drZC;ksa ,oa vf/kdkjksa ds fo"k; esa fy;s x;s fu.kZ; ds vuqlkj foRr gLr iqfLrdk [k.M&1 ls 6 rFkk vU; rRdkyhu #i ls izpfyr eSuqvy vkfn dks ykxw fd;k x;k Fkk tc rd fd fuxe }kjk vius #Yl jsxqys"kul ugha cuk;s tkrs ?ifjf"k"B&1? rnuqlkj ty fuxe esa foRr gLr iqfLrdk [k.M 2 Hkkx 2 ls 4 ewy fu;e 56 ds vUrZxr fu;e 56?d? ds vuqlkj lHkh vf/kdkfj;ksa ,oa deZpkfj;ksa dks 58 o"kZ dh vk;q esa lsokfuorRr ds vkns"k fn;s tkrsa jgs gSa ?ifjf"k"B&2?

mRrj izns"k "kklu dkfeZd vuqHkkx&1 }kjk fuxZr vf/klwpuk la[;k 1098 @d 1] 2001 fnukad 28 uoEcj 2001 ?ifjf"k"B&3? }kjk tkjh vf/klwpuk esa jkT;k/khu ljdkjh lsodksa dh vf/ko"kZrk vk;q ykSdfgr esa 58 o"kZ ds LFkku ij 60 o"kZ djusa dh Lohd`fr iznku dh xbZ gS tks Li"Vr% ek= jkT;k/khu ljdkjh lsodksa dh lkis{k gSA mDr vf/klwpuk dk ty fuxe ds vf/kdkfj;ksa ,oa deZpkfj;ksa ls dksbZ laca/k ugha gSA

mRrj izns"k lkoZtfud fuxe esa ij fu;a=.k vf/kfu;e 1975 ?m?iz? vf/kfu;e&1 o"kZ 1975? ds vUrZxr "kklu dh vksj ls lkoZtfud m/ke C;wjks ds ek;/e ls fuxe esa esa dk;Zjr vf/kdkjh @deZpkjh.k dh fdLh izdkj ls vf/ko"kZrk vk;q c

vr% bl fLFkfr ij mDr vf/klwpuk fnukad 28&11&2001 ds vuqlkj foRr gLr iqfLrdk [k.M 2 Hkkx 2 ls 4 ds ewy fu;e 56 esa izLrkfor la"kkS/ku dks fdLh izdkj ls fuxe ds }kjk vaxhd`r fd;k tkuk lEHko ugha gS ,oa mDr vf/klwpuk tu fuxe ds vf/kdkfj;ksa ,oa deZpkfj;ksa ij ykxw ugha gksxhA

rnuqlkj] bl dk;kZy; foKfIr ?ifjf"k"B&5? esa bafxr izLrko dks funsZ"kd e.My ds le{k dk;Z dh egRrk dks ns[krs gq, ifjpkyu ds ek;/e ls j[kk tk jgk gS ftl ij ekuuh; funsZ"kd e.My viuk vuqeksnu nsuk pkgSaxSA ;g Hkh izLrkfor gS fd mDr dk;kZy; foKfIr dk tkjh djus gsrq v/;{k]ty fuxe dks vf/kd`r dj fn;k tkos A**

Letter dated 15.1.2002 :

^^mRrj izns"k ty fuxe iz/kku dk;kZy;] mRrj izns"k ty fuxe] 6 jk.kk izrki ekxZ&226 001 y[kum dk;kZy; Kki

mRrj izns"k ty fuxe funsZ"kd e.My dh lgefr ls mRrj izns"k "kklu dkfeZd vuqHkkx&1 ds }kjk fuxZr vf/klwpuk la[;k 1095 @d&1 @2001 fnukad 28&11&2001 ds laca/k esa ;g fofnr fd;k tkrk gS fd mijksDr vf/klwpuk fnukad 28&11&2001] ftlds }kjk jkT;k/khu ljdkjh lsodksa dh vf/ko"kZrk vk;q ykSdfgr esa rRdkfyd izHkko ls 58 o"kZ ds LFkku ij 60 o"kZ djusa dh lgefr jkT;iky egksn; }kjk Lohd`fr iznku dh xbZ gS] ;g Li"Vr% ek= orZeku esa dk;Zjr jkT;k/khu ljdkjh lsodksa ds lkis{k gSA mDr vf/klwpuk dk ty fuxe ds vf/kdkfj;ksa@deZpkfj;ksa ls dksbZ laca/k ugha gSA

mRrj izns"k lkoZtfud fuxe esa ij fu;a=.k vf/kfu;e 1975 ?m?iz? vf/kfu;e&1 o"kZ 1975? ds vUrZxr "kklu dh vksj ls lkoZtfud m/ke C;wjks ds ek;/e ls fuxe esa esa dk;Zjr vf/kdkjh @deZpkjh.k dh fdLh izdkj ls vf/ko"kZrk vk;q c

vr,ao bl fLFkfr ij mDr vf/klwpuk fnukad 29&11&2001 ds vuqlkj foRr gLr iqfLrdk

[k.M 2 Hkx 2 Is 4 ds ewy fu;e 56 esa izLrkfor la"ks/ku dks fdh izdkj Is fuxe ds }kjk vaxhd`r fd;k tkuk IEHko ugha gS ,oa mDr vf/klwpuk tu fuxe ds vf/kdkfj;ksa @ deZpkfj;ksa ij ykxw ugha gksxhA

g? vLi"V ?ds?ds?feRry? v/;{k**

12. It is urged by the counsel for the respondents that the case of Harwinder Kumar (supra) decided by Hon"ble the Apex Court is confined to the facts of the petitioners in the Special Appeal who were governed by Uttar Pradesh Jal Nigam Engineers (Public Health Branch) Service Regulations, 1978. It is stated that the judgment is not applicable to the case of the petitioners as their services are governed by different service regulations and they are not entitled to get the benefit of the aforesaid judgment rendered in Special Appeal No. 7840 of 2002 in Harwinder Kumar (supra). It is also submitted that in the aforesaid circumstances, the judgment of the Hon"ble Apex Court is not binding on this Court under Article 141 of the Constitution of India and further that the Division Bench judgment in Civil Misc. Writ No. 43770 of 2005 has also not been affirmed by Hon"ble the Supreme Court till date.

13. Counsel for the respondents also placed Annexure C.A.3 to the counter affidavit before this Court, which is copy of the review application filed on behalf of U.P. Jal Nigam by the Chief Engineer Karmik before Hon"ble Supreme Court in Civil Appeal No. 7840 of 2002. Attention of the Court has also been drawn to the fact that against interim order dated 10.5.2005 passed by this Court in Special Appeal No. 559 of 2005 - U.P. Jal Nigam v. Radhey Shyam Gautam and Ors. an SLP was filed by U.P. Jal Nigam before Hon"ble Apex Court and Hon"ble Apex Court has been pleased to stay the order of this Court vide its order dated 16.9.2005. The matter of the petitioners being similar to Radhey Shyam Gautam, as such, they are not entitled to continue in service beyond the age of 58 years.

14. It is lastly contended that there was no rule/regulations governing common service conditions including the age of superannuation of employees of Jal Nigam, hence the U.P. Jal Nigam Board in its second meeting held on 2.9.1975 resolved to adopt various Government rules/regulations/orders including U.P. Fundamental Rules containing Rule 56(ka) whereby age of superannuation of Government employees is fixed. None of the regulations framed by Nigam u/s 97 of the Act in respect of various cadres including Regulation 31 contains any provision regarding fixation of age of superannuation and aforesaid regulations are merely cadre rules and the common service conditions of all Nigam employees are controlled by the rules/regulations/orders as adopted in the second meeting dated 2.9.1975 of the Board. It is stated that the aforesaid regulation is merely an administrative order, whereby, inter alia Rule 56(ka) of Fundamental Rules was adopted by the Nigam. By another resolution dated 9.1.2002 the U.P. Jal Nigam Board resolved not to adopt amended Rule 56 (ka) and decided to fix the age of superannuation of employees of the Nigam as 58 years.

In rebuttal

15. It is reasserted by counsel for the petitioners that the petitioners have been illegally retired from service at the age of 58 years in contravention of the rules and the regulations governing their conditions of service. It is urged that Hon''ble Apex Court in Harwinder Kumar (supra) has held that the amendment in Fundamental Rule 56-ka is equally applicable to all the employees of Jal Nigam and that from the perusal of the regulations framed by the Nigam in respect of different cadres as it is apparent that there is no specific reference in regard to the age of superannuation of the employees of Nigam. The order dated 18.11.2005 passed by Hon''ble Supreme Court in these facts is binding upon this Court under Article 141 of the Constitution of India. It is submitted by counsel for the petitioners that in the counter affidavit it has been candidly accepted by the respondents that there are no rules or regulations concerning employees of the Nigam as such specific reference to the age of superannuation as extended by the State Government in respect of its employees will equally and automatically apply to the petitioners u/s 37 of the Act.

16. It is further urged that following the judgment of Hon''ble Supreme Court, a Division Bench of this Court has allowed a bunch of writ petitions and has quashed the resolution dated 11.7.2002 wherein it has been decided that the age of superannuation of State Government employees will not be applicable to the employees of Jal Nigam, as such, those employees who retired in pursuance of the aforesaid resolution dated 11.7.2002 cannot be said to have been legally retired as the said resolution is not surviving any longer.

The case:

17. The petitioners in all these writ petitions were initially appointed in Local Self Government, Engineering Department of the State Government.

18. The State legislature promulgated U.P. Water Supply and Sewerage Act, 1975 (hereinafter referred to as "the Act"). u/s 3 of the Act, services of the petitioners were transferred to U.P. Jal Nigam (for short "Nigam") which was established w.e.f. 18.6.1975.

19. Section 31 of the Act provides that the properties and assets which immediately before the appointed date were vested in the State Government for the purposes of Local Self Government, Engineering Department, vested, and stood transferred to the Nigam with all rights, liabilities and obligations of the State Government pertaining to the aforesaid Department,

20. Section 37 of the Act provided that every person who was employed in the Local Self Government, Engineering Department of the State, would become employee of the Nigam w.e.f the appointed date. They shall hold their office or service of the Nigam till their services are terminated or until the terms and conditions of service are altered by the Nigam under the provisions of law or in accordance with any provision of the State Government, which for the time being

governed their services. Thus, the tenure of the employees was at the same remuneration and upon same other terms and conditions with same rights and privileges as to pension, gratuity and other matter as they would have had prior to the appointed date.

21. Before the transfer of the employees of the Local Self Government, Engineering Department to the Nigam, the age of superannuation of the employees under Fundamental Rule 56-A was 58 years which could be extended up to 60 years. The State Government vide letter dated 31.10.1975 stated that the service conditions of such employees of the Nigam, who had been transferred to the Nigam, would continue to remain the same u/s 37 of the Act.

22. Subsequently, the Nigam vide its decision dated 4.4.1977 resolved that the rights and responsibilities which were enjoyed by the officers of the then Local Self Government Engineering Department under the P.W.D. Manual, Financial Hand Books, Manual of Government Orders, Civil Services Regulations, Government Conduct Rules and other Manual of Government Orders that have been passed or may be passed by the Government from time to time, shall be deemed to be applicable to the officers of the Nigam provided any other order, in this regard is not passed by the Nigam.

23. Regulation 31 framed by the Nigam also provides that other terms and conditions of service of the employees of the Nigam, which have not been specifically dealt with under the Regulations, shall be governed by the rules, regulations and orders as are applicable to the State Government employees.

24. The Nigam, it appears, did not frame any specific regulation in respect of age of superannuation of its employees, hence in absence of any specific reference to the age of superannuation and the terms and conditions of service, which are generally applicable to the employees of the State Government would govern their conditions of service. The State Government vide Government order dated 28.11.2001 enhanced the age of superannuation of its employees from 58 to 60 years and accordingly amended Fundamental Rule 56, Volume II, Part II to IV of the U.P. Financial Hand Book.

25. It further appears that the Board of Directors of the Nigam resolved to enhance the age of superannuation of the employees transferred to Jal Nigam to 60 years and sent the same to the State Government for approval. In pursuance of the decision of the Board of Directors, approval for age of retirement from 58 to 60 years of the employees of Local Self Government Engineering Department, who had been transferred to Jal Nigam, has been accorded vide State Government's letter No. 3440/9-3-05-134C/05 Nagar Vikas Anubhag-3, Lucnow dated 30.8.2005. The Nigam vide Office Order dated 30.8.2005 extended the age of retirement of its employees from 58 to 60 years with immediate effect. The order is in Devnagri script, i.e. Hindi, and has been appended as Annexure 3 to the writ petition, It is as under:

^^iz/kku dk;kZy;] mRrj izns"k ty fuxe] 6 jk.kk izrki ekxZ y[kum lap;k

1072@2005&0021@04@05@ ?r`R;k? fnukad 30 2005 dk;kZy; Kki

mRrj izns"k vf/kfu;e la[k; 43@1975 ds vUrZxr tkjh mRrj izns"k ty laHkj.k ,oa lhoj O;oLFkk vf/kfu;e 1975 dh /kkjk 37(1) ds vkf//ku rRdkyhu Lok;Rr "kklu vfHk;U=.k foHkkx esa Isok;ksftr IHkh dkfeZd mRrj izns"k ty fuxe deZpkjh ds #i esa mUgha fucU/kuksa ,oa Isok "krksZ ij LFkkukUrfjr gq, ftu Isok "kklu vfHk;U=.k foHkkx esaa Isok ;ksftr FksA

fuxe funsZ"kd e.My }kjk fy, x, fu.kZ; ds ifjizs{; esa "kklu ds i= la[k; 3440@ukS &3&05&134 lh@05 uxj fodk"k vuqHkkx&3 y[kum fnukad 30&8&2005 }kjk mRrj izns"k ty fuxe dh Isok esa LFkkukUrfjr gq, lewg ^d* ^[k* ,oa ^x* oxZ ds dkfeZdksa dh vf/ko"kZrk vk;q rRdkyhu izHkko ls 58 o"kZ ls 60 o"kZ dh Lohd`fr iznku dj nh xbZ gSA

"kklu dh mijksDr Lohd`fr ds vuqdze esa ,rn}kjk mRrj izns"k ty lEHkj.k ,oa lhoj O;oLFk vf/kfu;e]1975 dh /kkjk 37?1? ds rgr rRdkyhu Lok;Rr "kklu vfHk;U=.k foHkkx ls mRrj izns"k ty fuxe dh Isok esa LFkkukUrfjr gq, lewg ^d* ^[k* ,oa ^x* oxZ ds dkfeZdksa dh vf/ko"kZrk vk;q rRdkyhu izHkko ls 58 o"kZ ls 60 o"kZ dh tkrh gSA

mDr ls lacaf/kr vf/ko"kZrk vk;q o Isokfuo`fRr dh fu;ekoyh cukus dh dk;Zokgh vf/kfu;e 1975 ds izkfo/kkuksa ds vUrZxr i`Fkd ls dh tkosxA

mijksDr vkns"k rRdky izHkko ls ykxw ekus tkosaxA

g?vLi"V ?ekS?vkte [kkW? v/;{k**

26. In substance, the aforesaid order is that all employees of the then Local Self Government Engineering Department, who had been transferred to U.P. Jal Nigam under the provisions of Section 37(1) of the U.P. Water Supply and Sewerage Act, 1975, promulgated under the Uttar Pradesh Notification No. 43.1975 shall be on the same terms and conditions of service which were applicable to them as in the Local Self Government Engineering Department.

27. A perusal of the aforesaid order also shows that proceedings for framing of regulations in respect of Group "Ka", "Kha" and "Ga" employees regarding their age of retirement is to be taken separately. The petitioners are Group "Ka", "Kha", "Ga" and "Gha" employees.

Conclusions

28. Having heard counsel for the parties, at length and on perusal of record, the following facts are not in dispute:

1. There is no specific reference in regard to the age of superannuation of the employees of Jal Nigam.

2. Under Regulation 37 read with Regulation 31 and letter of the State Government dated 31.10.1975 and decision of Hon"ble Supreme Court, every person employed in the then Local Self Government Engineering Department of the State Government and later on transferred to Jal Nigam would be entitled to

enjoy same rights, responsibilities, privileges etc., as were enjoyed by the officers/officials of the then Local Self Government Engineering Department provided that order to the contrary, in this regard has been passed by the Jal Nigam. In view of the fact that every person who was employed in the Local Self Government Engineering Department of the State of Uttar Pradesh shall on and from the appointed date i.e., 18th June 1975 become employee of the Nigam and shall hold his office or service therein by the same tenure, at the same remuneration and upon same other terms and conditions and with the same rights and privileges as to pension, gratuity and other matter as he would have held the same to the appointed date if the Act had not come into force and shall continue to do so till his remuneration or other terms and conditions of service are revised or altered by the Nigam in pursuance of any law or in accordance with any provision which for the time being governed his service.

29. In the regulations, namely, U.P. Jal Nigam (Public Health Branch) Service Regulation, 1978; U.P. Jal Nigam Subordinate Engineer Service Regulation, 1978; U.P. Jal Nigam Vitte Avam Lekha (Adhikari) Service Regulation, 1979; U.P. Jal Nigam Asstt/ Research Officer Service Regulation, 1979 and U.P. Jal Nigam Driller Service Regulation, 1979 which have been framed later on and which have come into force from time to time it is provided that the age of retirement of the employees of Jal Nigam is 60 years. In all other cases the age of retirement of the employees is 60 years. The above provisions of Regulation, 1978 are paramateria to the Regulation 31 of 1978. In the review application filed by the Chief Engineer (Karmik), no interim order has been granted by Hon"ble Supreme Court. The interim order granted in Civil Appeal No. 559/2005- U.P. Jal Nigam v. Radheyshyam Gautam is not a judgment whereas in Harwinder Kumar (supra), Hon"ble Supreme Court has laid down the law that age of superannuation of employees of Jal Nigam is 60 years which is binding upon this Court under Article 141 of the Constitution. The resolution dated 9.1.2002 of the Jal Nigam Board is only an administrative order over which judgment of Hon"ble Supreme Court shall prevail. Similar resolution dated 1.7.2002 where by it was resolved that extended age of superannuation of the State Government employees would not be applicable to the employees of the Jal Nigam has already been quashed by the Court. The decision taken by the Jal Nigam dated 9.1.2002 that of age of superannuation of its employees would be 58 years, therefore, cannot be sustained.

30. In the result, the writ petitions succeed and are allowed. It is directed that incase the employees have been allowed to continue up to the age of 60 years by virtue of some interim order, no recovery shall be made from them but in case, however, they have not been allowed to continue after completing the age of 58 years by virtue of erroneous decision taken by the Nigam for no fault of theirs, they would be entitled to payment of salary for the remaining period up to the age of 60 years which must be paid to them within a period of three months from the date of receipt of copy of this judgment by the Nigam. The petitioners are entitled to serve Jal Nigam till they attain the age of 60 years. No order as to

costs.