
(2017) 03 RAJ CK 0016
In the Rajasthan High Court
Case No : 5450 of 2009

V K Gupta

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

[Rajasthan Financial Corporation Employees Pension Regulations, 1990](#),
Regulation 3 -
Rajasthan State Financial Corporation Act, 1951, Section 48(1)

Citation : (2017) 03 RAJ CK 0016

Hon'ble Judges : Pushpendra Singh Bhati

Bench : SINGLE BENCH

Advocate : Sandeep Singh Shekhawat,?Himanshu Jain,?Gaurav Sharma,?
Ashwini Jaiman,?Virendra Lodha,?Anirudh Singh,?Anurag Sharma,?Aniroodh
Mathur,?Praneet Sharma

Judgement

1. The petitioners retired from Rajasthan Financial Corporation (hereinafter referred as "RFC") on attaining the age of superannuation. The controversy has arisen out of the fact that the RFC has withdrawn the Rajasthan Financial Corporation Employees Pension Regulations, 1990 (hereinafter referred as the "Pension Regulations of 1990") which had come into force w.e.f. 01/04/1987 by invoking power under Regulation 3. As per the petitioners, the withdrawal of the Pension Regulations of 1990 is without complying with the provisions contained under sub-section (1) of Section 48 of the State Financial Corporation Act, 1951 (hereinafter referred as the "Act of 1951") which reads as under:-

"48(1) The Board may, after consultation with the [Small Industries Bank] and with the previous sanction of the State Government, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act."

2. The Pension Regulations of 1990 were notified in the Official Gazettee on 18/06/1992. The retired officers had repeatedly represented to the respondents that the Pension Scheme should be continued and since it had accrued to the retired officers at one time of their service, therefore, the same ought not to have been withdrawn with an effect which was retrospective. The petitioners also stated in their petition that neither the Small Industries Development Bank of India (hereinafter referred as "SIDBI") was consulted before withdrawing the Pension Scheme nor there was an approval taken from the State Legislature. As per the petitioners, withdrawal of the Pension Scheme was not a bonafide decision as the respondents had in-fact received legal opinion that such Pension Scheme ought to have been continued to the benefits of its retired employees. It is further stated in the petitions that as per 53 rd annual report of 2007-08, it has been shown that the RFC has been continuously running in profit after tax deductions of Rs.63.12 lacs in 1999 and was presently running in profit to the tune of Rs.1149.44 lacs. It was also stated that decision had been taken in 2009 to accept the recommendations of the RFC for withdrawing the Pension Scheme whereas the same has been made applicable for the persons who retired even in the year 2005. The decision of the Board was not did not carry approval from the legislature. The petitioners also referred the judgment of Apex Court in the case of State of Gujarat Vs. Raman Lal Kishori Lal Soni: 1983(2) SCC 33 whereby the right to pension had been recognized as a vested right and the same could not

have been withdrawn once it had accrued. Two letters dt.26 th March, 2009 clearly show that the decision to revoke the pension scheme was on mechanical grounds in violation of the principles of natural justice.

3. The respondents have filed a detailed reply and stated that all the petitioners have retired on attaining the age of superannuation under the CPF Scheme and accordingly, the terminal benefits under the scheme have been paid to them and the same has been accepted by all the retired employees without any protest. The letter dt.16/12/2006 as per the respondents makes it clear that the Board can frame rules and regulations after consultation with the SIDBI and the sanction of the State Government but for withdrawal of the regulations, prior approval of the Government and consultation of SIDBI was not the requirement of the Act of 1951. The respondents have referred to the SIDBI letter dt.30/12/2005 whereby it has been made clear that in terms of the provisions of Section 48(1) of the Act of 1951, the SIDBI is required to be consulted for making regulations and no approval is required in the matter as the Board had already taken a decision for withdrawal of the Pension Scheme. The RFC had further informed the State Government vide letter dt.11/03/2004 that the Pension Scheme of the RFC was not a viable proposition and was not in accordance with the future retirement liabilities. The process of withdrawal of the Pension Scheme was initiated on 02/11/1999 and took a long time and was culminated into final decision by the State Government on 26/03/2009. The Committee was constituted by the Government to examine the matter which was placed before the Board. The RFC finally vide letter dt.26/03/2009 requested the State Government that in the growing competition and due to paucity of

resources, the funds are drawing up and the RFC is finding it difficult to continue with the Pension Scheme. The increased burden on the RFC of the retired employees was restricting the functioning of the RFC and therefore, the decision of the Board dt.21/06/2004 for withdrawal of the Pension Scheme in supersession to its previous letter was made. The respondents also relied that the Board was empowered to revoke the Pension Scheme and accordingly it has done the same vide order dt.12/08/2004 with immediate effect and not by retrospective effect as the retired employees, who were getting pension at the time of withdrawal of Pension Regulations, are still getting pension by virtue of the said order. The Regulation No.3 as per the respondents was an important part of the pension regulations and bears prior approval of SIDBI as well as the State Government but the same was not required at the time of withdrawal of the Pension Regulations of 1990. The letter written by the State of Rajasthan dt.26/03/2009 read as under:-

"GOVERNMENT OF RAJASTHAN INDUSTRIES DEPARTMENT No.F.7(46)Ind./08 Dt.26.03.2009 To The Chairman & Managing Director, R.F.C. Jaipur

Sir, This is with reference to your letter dt. 26.03.2009 regarding the Pension scheme. The matter has been re-examined in Government. In view of the fact that RFC is on record that it is unable to finance the Pension Scheme owing to severe financial constraints the State Government hereby confirms the decision of the Board of RFC dt. 21.6.2004 withdrawing the Pension Scheme. This issues in supersession of previous letter of the State Government dt. 16th December, 2006.

Yours Faithfully Sd/- (C.S. Rajan) Pr. Secretary to Govt."

4. Counsel for the petitioners has argued that the retired employees were being deprived of the pension on account of the arbitrary decision taken by the respondents. Counsel for the petitioners stated that there was delay and latches in the decision being taken and implemented by the respondents and therefore,

the decision ought to be quashed on this count alone. Counsel for the petitioners further stated that the scope of judicial review was amply clear as the respondent's arbitrary decision of not having the sanction in law fell within the purview of judicial review and therefore, this Court ought to have interfered in the case by quashing the decision of withdrawing the Pension Regulations. Counsel for the petitioners also stated that there was no financial constraint and it was open for the respondents to connect the pension scheme with the on-going profits which as per the petitioners was very much there. Counsel for the petitioners also argued that the respondents are estopped from taking a decision of withdrawing the Pension Scheme as the same has been granted by a considered decision and the Gazette Notification and therefore, once such consideration was made in accordance with Section 48 of the Act of 1951 as well as clause 3 of the Pension Regulations, then it was not open for the respondents to go back on the issue. Counsel for the petitioners also argued on the doctrine of legitimate expectation stating that once the respondents had agreed to the Pension Regulations in a given facts and circumstances, then it was not open for them to take a reverse stand by withdrawing the same with retrospective effect. Counsel for the petitioners also argued that if at all there had to be a withdrawal of the Pension Regulations, then it should have been made applicable to the new appointments and cannot be made applicable on the persons already appointed and to whom the benefit of Pension was already accrued on account of the earlier decision. Counsel for the petitioners also stated that the decision of withdrawal was in gross violation of Section 48 of the Act of 1951 and Regulation 3 of the Pension Regulations and therefore, it was not open for the respondents to continue with the

decision of revocation of the Pension Regulations. Counsel for the petitioners also argued that the Gazette Notification was made at the time of bringing the Pension Regulations invogue and therefore, withdrawing the same by an administrative order was not permissible in law. Counsel for the petitioners also stated that since there was no prior approval from the SIDBI and the State Government, therefore, the withdrawal itself was bad in the eye of law.

5. Counsel for the respondents argued that the SIDBI and the State Government were required to bring the Scheme into effect but their approval was required at the time of withdrawal of the same as stipulated in Section 48 of the Act of 1951. Counsel for the respondents relied upon the judgment of the Apex Court in the case of State of H.P. & Ors. Vs. Rajesh Chander Sood etc.etc.: 2016(10) SCC 77 whereby it was laid down that the Government, in exercise of its reviewing powers, finding that the pension scheme was based on incorrect calculations and its operation would not be financially viable, may sought to withdraw the same prospectively without affecting those employees who had already commenced to draw the pensionary benefits under the Scheme, was not arbitrary, unreasonable or irrational. It was further held in the aforementioned judgment that the Government cannot be delegated to take over the financial liability in respect of withdrawing the same in exercise of its review power. The relevant portion of the judgment, relevant for the present adjudication, is reproduced as under:-

"70. With effect from 1.4.1999, the employees who had opted for "the 1999 Scheme" (or, who were deemed to have opted for the same) were no longer governed by the provisions of the Provident Fund Act (under which they had statutory protection, for the payment of provident fund). Consequent upon an exemption having been granted to the concerned corporate bodies by the

competent authority under the Provident Fund Act, the Employees Provident Funds Scheme, 1995, was replaced, by "the 1999 Scheme". All direct entrants after 1.4.1999, were also entitled to the rights and privileges of "the 1999 Scheme". We are therefore of the considered view, that the submissions advanced on behalf of the State of Himachal Pradesh premised on the assertion, that no vested right accrued to the employees of the concerned corporate bodies, on the date when "the 1999 Scheme" became operational (with effect from 1.4.1999), or to the direct entrants who entered service thereafter, cannot be accepted. In this behalf it would also be relevant to emphasize, that as soon as the concerned employees came to be governed by "the 1999 Scheme", a contingent right came to be vested in them. The said

contingent right created a right in the employees to claim pension, at the time of their retirement. Undoubtedly, the aforesaid contingent right would crystallise only upon the fulfillment of the postulated conditions, expressed on behalf of the appellants (on having rendered, the postulated qualifying service). However, once such a contingent right was created, every employee in whom the said right was created, could not be prevented or forestalled, from fulfilling the postulated conditions, to claim pension. Any action pre-empting the right to pension, emerging out of the conscious option exercised by the employees, to be governed by "the 1999 Scheme" (or to the direct entrants after the introduction of "the 1999 Scheme"), most definitely did vest a right in the respondent-employees.

75. Having given our thoughtful consideration to the issue canvassed, and having gone through the judgments cited, we are of the considered view, that this Court has repeatedly upheld a cut-off date, for extending better and higher pensionary benefits, based on the financial health of the employer. A cut-off date can therefore legitimately be prescribed for extending pensionary benefits, if the funds available cannot assuage the liability, to all the existing pensioners. We are therefore satisfied to conclude, that it is well within the authority of the State Government, in exercise of its administrative powers (which it exercised, by issuing the impugned repeal notification dated 2.12.2004) to fix a cut-off date, for continuing the right to receive pension in some, and depriving some others of the same. This right was unquestionably exercised by the State Government, as determined by this Court, in the R.R. Verma case (supra), wherein this Court held, that the Government

was vested with the inherent power to review. And that the Government was free to alter its earlier administrative decisions and policy. Surely, this is what the State Government has done in the present controversy. But this Court in the above mentioned judgment, placed a rider on the exercise of such power by the Government. In that, the exercise of such power, should be in consonance with all legal and statutory obligations.

79. We are of the considered view, that the principle of estoppel/promissory estoppel cannot be invoked at the hands of the respondent-employees, in the

facts and circumstances of this case. It is not as if the rights which had accrued to the respondent- employees under the Employees' Provident Funds Scheme, 1995 (under which the respondent- employees were governed, prior to their being governed by "the 1999 Scheme") have in any manner been altered to their disadvantage. All that was taken away, and given up by the respondent-employees by way of foregoing the employer's contribution upto 31.3.1999 (including, the accrued interest thereon), by way of transfer to the corpus fund, was restored to the respondent-employees. All the respondent- employees, who have been deprived of their pensionary claims by the repeal notification dated 2.12.2004, would be entitled to all the rights which had accrued to them, under the Employees' Provident Funds Scheme, 1995. It is therefore, not possible for us to accept, that the respondent-employees can be stated to have been made to irretrievably alter their position, to their detriment. Furthermore, all the corporate bodies (with which the respondent-

employees, are engaged) are independent juristic entities, as held in *State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha* (supra). The mere fact, that the corporate bodies under reference, are fully controlled by the State Government, and the State Government is the ultimate authority to determine their conditions of service, under their Articles of Association, is inconsequential. Undoubtedly, the respondent- employees are not Government employees. The State Government, as a welfare measure, had ventured to honestly extend some post- retiral benefits to employees of such independent legal entities, on the mistaken belief, arising out of a miscalculation, that the same can be catered to, out of available resources. This measure was adopted by the State Government, not in its capacity as the employer of the respondent-employees, but as a welfare measure. When it became apparent, that the welfare measure extended by the State Government, could not be sustained as originally understood, the same was sought to be withdrawn.

80. We are of the view that the principle invoked on behalf of the respondent-employees, cannot be applied in the facts of the present case, specially, in view of the decision in *M/s. Bhagwati Vanaspati Traders v. Senior Superintendent of Post Offices, Meerut*, AIR 2015 SC 901, wherein this Court held as under:- "The first contention advanced at the hands of the learned counsel for the appellant was based on the decision rendered by this Court in *Tata Iron & Steel Co. Ltd. v. Union of India & Ors .*, (2001) 2 SCC 41, wherefrom learned counsel invited our attention to the following observations:- "20. Estoppel by

conduct in modern times stands elucidated with the decisions of the English Courts in *Pickard v. Sears*, 1837 6 Ad. & El. 469, and its gradual elaboration until placement of its true principles by the Privy Council in the case of *Sarat Chunder Dey v. Gopal Chunder Laha*, (1891-92) 19 IA 203, whereas earlier Lord Esher in the case of *Seton Laing Co. v. Lafone*, 1887 19 Q.B.D. 68, evolved three basic elements of the doctrine of Estoppel to wit:

"Firstly, where a man makes a fraudulent misrepresentation and another man

acts upon it to its true detriment: Secondly, another may be where a man makes a false statement negligently though without fraud and another person acts upon it: And thirdly, there may be circumstances under which, where a misrepresentation is made without fraud and without negligence, there may be an Estoppel." Lord Shand, however, was pleased to add one further element to the effect that there may be statements made, which have induced other party to do that from which otherwise he would have abstained and which cannot properly be characterized as misrepresentation. In this context, reference may be made to the decisions of the High Court of Australia in the case of *Craine v. Colonial Mutual Fire Insurance Co. Ltd.*, 1920 28 C.L.R. 305. Dixon, J. in his judgment in *Grundt v. The Great Boulder Pty. Gold Mines Pty. Ltd.*, 1938 59 C.L.R. 641, stated that:

"In measuring the detriment, or demonstrating its existence, one does not compare the position of the representee, before and after acting upon the representation, upon the assumption that the representation is to be regarded as true, the question of estoppel does not arise. It is only when the

representor wished to disavow the assumption contained in his representation that an estoppel arises, and the question of detriment is considered, accordingly, in the light of the position which the representee would be in if the representor were allowed to disavow the truth of the representation."

(In this context see *Spencer Bower and Turner: Estoppel by Representation*, 3rd Ed.). Lord Denning also in the case of *Central Newbury Car Auctions Ltd. v. Unity Finance Ltd.*, 1956 (3) All ER 905 appears to have subscribed to the view of Lord Dixon, J. pertaining to the test of "detriment" to the effect as to whether it appears unjust or unequitable that the representator should now be allowed to resile from his representation, having regard to what the representee has done or refrained from doing in reliance on the representation, in short, the party asserting the estoppel must have been induced to act to his detriment. So long as the assumption is adhered to, the party who altered the situation upon the faith of it cannot complain. His complaint is that when afterwards the other party makes a different state of affairs, the basis of an assertion of right against him then, if it is allowed, his own original change of position will operate as a detriment, (vide *Grundts*: High Court of Australia (supra)).

21. *Phipson on Evidence* (Fourteenth Edn.) has the following to state as regards estoppels by conduct.

"Estoppels by conduct, or, as they are still sometimes called, estoppels by matter in pais, were anciently acts of notoriety not less solemn and formal than the execution of a deed, such as livery of seisin, entry, acceptance of an estate and the like, and whether a party had or had not concurred in an act of this sort

was deemed a matter which there could be no difficulty in ascertaining, and then the legal consequences followed (*Lyon v. Reed*, (1844) 13 M & W 285 (at p. 309). The doctrine has, however, in modern times, been extended so as to

embrace practically any act or statement by a party which it would be unconscionable to permit him to deny. The rule has been authoritatively stated as follows: "Where one by his words or conduct willfully causes another to believe the existence of a certain state of things and induces him to act on that belief so as to alter this own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time." (*Pickard v. Sears* (supra)). And whatever a man's real intention may be, he is deemed to act willfully "if he so conducts himself that a reasonable man would take the representation to be true and believe that it was meant that he should act upon it." (*Freeman v. Cooke*, 1848 (2) Exch. 654: at p. 663).

Where the conduct is negligent or consists wholly of omission, there must be a duty to the person misled (*Merchantile Bank vs. Central Bank*, 1938 AC 287 at p. 304, and *National Westminster Bank v. Barclays Bank International*, 1975 Q.B. 654). This principle sits oddly with the rest of the law of estoppel, but it appears to have been reaffirmed, at least by implication, by the House of Lords comparatively recently (*Moorgate Mercantile Co. Ltd. v. Twitchings*, (1977) AC 890). The explanation is no doubt that this aspect of estoppel is properly to be considered a part of the law relating to negligent representations, rather than estoppel properly so-called. If two people with the same source of information assert the same truth or agree to assert the same falsehood at the same time, neither can be

estopped as against the other from asserting differently at another time (*Square v. Square*, 1935 P. 120)."

22. A bare perusal of the same would go to show that the issue of an estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status. The contextual facts however, depict otherwise. Annexure 2 to the application form for benefit of price protection contains an undertaking to the following effect:- "We hereby undertake to refund to EEPC Rs... the amount paid to us in full or part thereof against our application for price protection. In terms of our application dated against exports made during... In case any particular declaration/certificate furnished by us against our above referred to claims are found to be incorrect or any excess payment is determine to have been made due to oversight/wrong calculation etc. at any time. We also undertake to refund the amount within 10 days of receipt of the notice asking for the refund, failing which the amount erroneously paid or paid in excess shall be recovered from or adjusted against any other claim for export benefits by EEPC or by the licensing authorities of CCI & C." and it is on this score it may be noted that in the event of there being a specific undertaking to refund for any amount erroneously paid or paid in excess (emphasis supplied), question of there being any estoppel in our view would not arise. In this context correspondence exchanged between the parties are rather significant. In particular letter dated 30.11.1990 from the

and the reply thereto dated 8.3.1991 which unmistakably record the factum of non-payment of JPC price."

82. We are also of the view, that the principle of estoppel/promissory estoppel, is not applicable in a situation, where the original position, which the individual enjoyed before altering his position (by opting, or deeming to opt - for being governed by "the 1999 Scheme") can be restored. For the instant proposition, reference may be made to the judgment in *Pratima Chowdhury v. Kalpana Mukherjee*, (2014) 4 SCC 196, wherein it was held as under:-

"We shall, however, endeavour to deal with the principle of estoppel, so as to figure whether, the rule contained in Section 115 of the Indian Evidence Act could have been invoked, in the facts and circumstances of the present case. Section 115 of the Indian Evidence Act is being extracted hereinabove:-

"115. Estoppel.- When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title." It needs to be understood, that the rule of

estoppel is a doctrine based on fairness. It postulates, the exclusion of, the truth of the matter. All, for the sake of fairness. A perusal of the above provision reveals four salient pre conditions before invoking the rule of estoppel. Firstly, one party should make a factual representation to the other party. Secondly, the other party should accept and rely upon the aforesaid factual representation. Thirdly, having relied on the aforesaid factual representation, the second party should alter his position. Fourthly, the instant altering of position, should be such, that it would be iniquitous to require him to revert back to the original position. Therefore, the doctrine of estoppel would apply only when, based on a representation by the first party, the second party alters his position, in such manner, that it would be unfair to restore the initial position."

83. Since there is no dispute, that the original position (the rights enjoyed by the respondent- employees, under the Employees Provident Fund Scheme, 1995) available before "the 1999 Scheme" was given effect to, has actually been restored, we are of the considered view, that the principle sought to be invoked on behalf of the respondent-employees, cannot augur in a favourable determination for them, because it is not possible to conclude, that it would be unfair to restore them to their original position. In fact, in view of the financial

incapacity to continue "the 1999 Scheme", the only fair action would be to restore the employees, to the Employees Provident Funds Scheme, 1995. This has actually been done by the State Government. It is therefore not possible in law, to apply the principle of estoppel/promissory estoppel, to the facts of the present controversy.

87. We have given our thoughtful consideration to the above contention. It is not possible for us to accept the instant contention, advanced on behalf of the respondent-employees. The calculations projected at the behest of the State Government, to demonstrate the financial unviability of the scheme, have not been disputed. The same have been detailed in paragraph 10 above. The basis thereof, projected by the high level committee, admittedly constitutes the rationale for issuing the repeal notification dated 4.12.2004. We are of the view, that the consideration at the hands of the State Government was conscious and pointed. And was supported by facts and figures. It is apparent, that out of 17 corporations/boards who were invited to express their views on the issue, only 7 had actually done so. It is not the case of the respondent- employees, that any one of those who had expressed their views, contested the fact, that the pension scheme was not self- financing. Those who expressed their views, affirmed that the pension scheme could be salvaged only with Government support. Those who did not express their views, obviously had no comments to offer. The position projected by the State Government, therefore, cannot be considered to have been effectively rebutted. Certain facts and figures, have indeed been projected, on behalf of the respondent-employees. These have been recorded by us in paragraphs 39 and 40. Financial calculations can not be made casually, on a generalized basis. In the absence of any authenticity, and that too with reference to all the 20 corporate entities specified in Schedule I of "the 1999 Scheme", the projections made on behalf of the respondent-employees, cannot be accepted, as constituting a legitimate basis, for a favourable legal determination. Since the respondent-

employees have not been able to demonstrate, that the foundational basis for withdrawing "the 1999 Scheme", was not premised on any arbitrary consideration, or alternatively, was not founded on any irrelevant consideration, it is not possible for us to accept the contention, that the withdrawal of "the 1999 Scheme", was not based on due consideration, or that, it was irrational or arbitrary or unreasonable. We are also satisfied, that the action of the State Government, in allowing those who had already started earning pensionary benefits under "the 1999 Scheme", was based on a legitimate classification, acceptable in law. In the above view of the matter, the action of the State Government cannot be described as arbitrary, and as such, violative of Article 14 of the Constitution of India. We are also satisfied in concluding, that the understanding of the State Government (which had resulted in introducing "the 1999 Scheme") on being found to be based on an incorrect calculation, with reference to the viability of the corpus fund (to operate "the 1999 Scheme"), had to be administratively reviewed. And that, the State Government's determination

in exercising its power of review, was well founded.

88. It is also not possible for us to accept, that any Court has the jurisdiction to fasten a monetary liability on the State Government, as is the natural consequence, of the impugned order passed by the High Court, unless it emerges from the rights and liabilities canvassed in the lis itself. Budgetary allocations, are a matter of policy decisions. The State Government while promoting "the 1999 Scheme", felt that the same would be self-financing. The State Government, never intended to allocate financial resources out of State funds, to run the pension

scheme. The State Government, in the instant view of the matter, could not have been burdened with the liability, which it never contemplated, in the first place. Moreover, it is the case of the respondent-employees themselves, that a similar pension scheme, floated for civil servants in the State of Himachal Pradesh, has also been withdrawn. The State Government has demonstrated its incapacity, to provide the required financial resources. We are therefore of the view, that the High Court should not (- as it could not) have transferred the financial liability to run "the 1999 Scheme", to the State Government. Similar suggestions made by the concerned corporate bodies, cannot constitute a basis for fastening the residuary liability on the Government.

90. We have given our thoughtful consideration of the plea of discrimination, advanced at the behest of the respondent-employees. It is not possible for us to accept, that the employees of corporate bodies, can demand as of right, to be similarly treated as Government employees. Whilst it can be stated that Government employees of the State of Himachal Pradesh are civil servants, the same is not true for employees of corporate bodies. Corporate bodies are independent entities, and their employees cannot claim parity with employees of the State Government. The State Government has a master-servant relationship with the civil servants of the State, whilst it has no such direct or indirect nexus with the employees of corporate bodies. The State Government may legitimately choose to extend different rights in terms of pay-scales and retiral benefits to civil servants. It may disagree, to extend the same benefits to employees of corporate bodies. The State Government would be well within its right, to deny similar benefits

to employees of corporate bodies, which are financially unviable, or if their activities have resulted in financial losses. It is common knowledge, that when pay-scales are periodically reviewed for civil servants, they do not automatically become applicable to employees of corporate bodies, which are wholly financed by the Government. And similarly, not even to employees of Government companies. Likewise, there cannot be parity with Government employees, in respect of allowances. So also, of retiral benefits. The claim for parity with Government employees is therefore wholly misconceived. It is, therefore, not possible for us to accept the contention advanced on behalf of the respondent-employees, that the action of the State Government was discriminatory.

92. We shall now consider, whether the State Government which had introduced "the 1999 Scheme", had the right to repeal the same. In answering the above issue, it needs to be consciously kept in mind, that the employees of corporate bodies, who were extended the benefits of "the 1999 Scheme", as already noticed above, were not employees of the State Government. "The 1999 Scheme" was, therefore, just a welfare scheme introduced by the State Government, with the object of ameliorating the financial condition of employees, who had rendered valuable service in State owned corporations. In order to logically appreciate the query posed, we may illustratively take into consideration a situation, wherein an organization similar to the one in which the respondent-employees were engaged, suffered such financial losses, as would make the sustenance of the organization itself, unviable. Can the employees of such an organization,

raise a claim in law, that the corporate body be not wound up, despite its financial unworkability? Just because, the resultant effect would be, that they would lose their jobs. The answer to the above query, has to be in the negative. The sustenance of the organization itself, is of paramount importance. The claim of employees, who have been engaged by the organization, to run the activities of the organization, is of secondary importance. If an organization does not remain financially viable, the same cannot be required to remain functional, only for the reason that its employees, are not adversely impacted. When and how a decision to wind up an organization is to be taken, is a policy decision. The decision to wind up a corporation may be based on several factors, including the nature of activities rendered by it. In a given organization, sometimes small losses may be sufficient to order its closure, as its activities may have no vital bearing on the residents of the State. Where, an organization is raised to support activities on which a large number of people in the State are dependent, the same may have to be sustained, despite the fact that there are substantial losses. The situations are unlimited. Each situation has to be regulated administratively, in terms of the policy of the State Government. Whether a corporate body can no longer be sustained, because its activities are no longer workable, practicable, useable, or effective, either for the State itself, or for the welfare of the residents of the State, is for the State Government to decide. Similarly, when and how much, is to be paid as wages (or allowances) to employees of an organization, is also a policy decision. So also, post- retiral benefits. All these issues fall in the realm of executive determination. No Court has any role therein. For the reasons recorded hereinabove, in our

considered view, the conditions of service including wages, allowances and post-retiral benefits of employees of corporate bodies, will necessarily have to be determined administratively, on the basis of relevant factors. Financial viability, is an important factor, in such consideration. In the facts and circumstances of the present case, it is not possible for us to accept, the contention advanced on behalf of the respondent- employees, that the State Government should provide financial support for sustaining "the 1999 Scheme", at least for such of the

employees, who were engaged on or before the date of issuance of the repeal notification (- 4.12.2004). We would like to conclude the instant submission by recording, that the respondent- employees have not been able to make out a case, that the notification dated 2.12.2004, repealing "the 1999 Scheme", was in any manner, capricious, arbitrary, illegal or uninformed, and as such, we would further conclude, that the respondent-employees cannot be considered as being entitled, to any relief, through judicial process.

94. It is also not possible to accept, the contention advanced on behalf of the respondent-employees, based on Article 300A of the Constitution of India. We have deliberated hereinabove, the nature of the right created by "the 1999 Scheme". We have examined all the legal submissions advanced on behalf of the respondent-employees. We have arrived at the conclusion, that action of the State Government, was well within its authority. We have also held the same to be based on due consideration. We have therefore, rejected the assertion made on behalf of the respondent- employees, that the impugned notification dated 2.12.2004, was unconstitutional, irrational, arbitrary or unreasonable. It is accordingly not possible

for us to accept, the challenge raised by the respondent- employees, that they had been deprived of their right to pensionary benefits, without the authority in law. We are therefore of the view, that the claim raised on behalf of the respondent-employees, by placing reliance on Article 300A of the Constitution of India, is misconceived.

95. Our determination, with reference to all the issues canvassed above, would also answer the question left open in paragraph 52 above. Namely, whether or not the contingent right, as was vested in the respondent- employees, was binding or irrevocable. We may now sum up the position determined by us, in the foregoing paragraphs. It is no doubt true that we have concluded, that "the 1999 Scheme", created a contingent right in the respondent-employees. The respondent-employees comprise of all those employees of corporate bodies, who had opted for "the 1999 Scheme", immediately on its having been introduced; all those, who were deemed to have opted for "the 1999 Scheme" by not having exercised any option; and all those who were appointed after the introduction of "the 1999 Scheme". The first issue that arises is, whether any express right or obligation existed, between the respondent- employees and the State Government. One can understand, such a claim arising out of an obligation between an employer and his employees, where there is a quid pro quo - a trade off based on a relationship (as between, an employer and employee). We have however concluded, that there was no such relationship between the State Government, and the respondent- employees. All the corporate bodies in which the respondent-employees were/are engaged, are independent juristic entities. It is therefore apparent, that the claim raised by the respondent-employees, is

not based on any right or obligation between the parties. We have also examined the submissions advanced by learned counsel premised on various

constitutional provisions (- Articles 14, 16, 21 and 300A of the Constitution of India), but have found, that no right can be stated to have been violated, thereunder. We have also examined the other legal submissions, advanced on behalf of the respondent-employees, and have found the same, as unjustified. The issue whether administrative review was permissible, after "the 1999 Scheme" had become operational, has been answered in the affirmative. And finally, we have concluded, that the exercise of such power, while issuing the repeal notification, was based on due consideration. We therefore hereby uphold, the legality and constitutionality of the notification dated 2.12.2004."

6. Counsel for the respondents further argued that one of the writ petitions has been filed by the Association and it not being a registered Association, had no right to prefer such writ petition but such objection cannot be sustained in light of the fact that the petition is pending before this Court since the year 2009 and the petitioners are retired employees and therefore, in the interest of justice, it would be appropriate to adjudicate the dispute on its merits.

7. Counsel for the petitioners relied upon a judgment in the case of Reserve Bank of India Vs. Secidennis and another: 2004(9) SCC 461 whereby the condition to make regulations have been specified. Counsel for the petitioners also relied upon a judgment in the case of Union of India Vs. Tushar Ranjan Mohanty : 1994(5) SCC 584 for revoking of the regulations not being with retrospective effect. He has also relied upon a judgment in the case of U. Ranghvendra Acharaya Vs. State of Karnataka: AIR 2006(SC) 2145 regarding right to receiving of pension. He has also relied upon a judgment in the case of J. Jayalalithaa and others Vs. State of Karnataka and others: 2014(2) SCC 401 to as to establish that the things in law had to be done in a particular manner. Counsel for the petitioners has also relied upon the judgment in the case of Haryana State Minor Irrigation Tubewells Corporation and others Vs. G.S. Uppal and others: (2008)7 SCC

375 whereby the financial constraint was declared not to be a ground for non-grant of pension. Counsel for the petitioner has also relied upon a judgment in the case of Rajasthan Financial Corporation Officers' Association & anr. Vs. Rajasthan Financial Corporation & anr.: 1992(1) RLR 24 supporting the maintainability and locus of the writ petition.

8. The precedent law cited is not applicable in the facts and circumstances of the case as the condition to make regulations is an independent criteria of each legislation and cannot have a general sweeping wide impact. Similarly, the revocation also is not open for being their in a fixed jacket formula and the power of revocation, in-fact, is imbibed in the power of making a regulation. The right to pension thus has to be considered in light of financial constraints and also in light of the latest precedent law cited by the respondents. The respondents are entitled to revoke the Pension Claim as per the policy decision. The maintainability is permitted as the litigation is pending since long time and it is appropriate to decide the case on its own merits at this stage.

7. After hearing counsel for the parties and perusing record as well as the precedent law, this Court is of the opinion that the respondents were at liberty to withdraw the Pension Scheme as the budgetary allocations and financial implications are the matter of policy decision. This Court feels that the administrative review was within the purview of the respondents and if they have found the Scheme to be financially non-viable and sought to revoke the same prospectively, then it was within their domain to do so. The right of the petitioners to be governed by the Pension Scheme, as per this Court, was not an irrevocable right and thus the respondents could apply their mind on the same without prejudice to the fact that the same had been approved by them at an earlier

instance. The ambit of Section 48 of the Act of 1951 was very wide and it empowers the Board to make such scheme with the approval of SIDBI and the State Government. However, the same could not be said to be a requirement for withdrawal of the scheme. This Court is also satisfied on perusing the original record of the case whereby the decision to notify the withdrawal of the Pension Regulations in the Gazettee had been withheld by the respondents only on account of the matter being sub-judice and therefore, the same was not activated in the best interest of justice. The categorical stand of the Government is on record vide letter dt.26/03/2009 whereby the decision of the Board dt.21/06/2004 for withdrawing the pension scheme owing to the severe financial constraints is confirmed by the State Government and the same is absolutely in accordance with law. This Court also does not find any strict obligation upon the respondents to have a prior approval from the SIDBI, particularly in light of the fact that the same approval being sought by the respondents, was refused by the SIDBI on the ground that it was not required for withdrawal of the Scheme.

8. In light of the aforesaid facts and the precedent law as discussed herein above, this Court is not inclined to invoke its extra ordinary jurisdiction under Article 226 of the Constitution of India pertaining to the decision of the respondents to withdraw the pension regulations vide order dt.26/03/2009. Hence the writ petitions are dismissed.

9. A copy of this order be placed in each connected file.