A STATE OF U.P. & ORS.

v.

VIRENDRA KUMAR & ORS.

(Civil Appeal Nos.6622-6623 of 2022)

B NOVEMBER 25, 2022

**[SANJAY KISHAN KAUL, ABHAY S. OKA AND VIKRAM NATH, JJ.]**

*Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 – s.3, 7, 8, 15, 92, 94(2)(nn) and 95(1)(f) – On 10.02.2020, a Bench* C *of two judges made reference to a larger Bench to reconsider the* Preetam Singh's *case – The core issue on which the reference is made to a larger Bench is whether the act of determining service conditions of the employees and officers of the Board is one of the statutory functions of the Board – Held: The power to determine* D *the conditions of service of officers and servants of the Board vests with the Board and, said power can be exercised only by framing regulations under clause (f) of sub-section (1) of section 95 – Clause (nn) of sub-section (2) of section 94 confers power of the State Government to frame Rules in respect of any matter for which regulations can be framed by the Board – The decision of the Supreme* E *Court in* Preetam Singh's *case is upheld with a modification that State Government can always exercise the powers under clause (nn) of sub-section (1) Section 94 of the 1965 Act for determining the conditions of service of the officers (other than the Housing Commissioner) and employees of the Board – If such power is* F *exercised, those provisions of the Regulations framed under clause (f) of sub-section (1) of Section 95 which are repugnant to the Rules, shall be void – U.P. State Control Over Public Corporations Act, 1975 – s.2.*

**Disposing of the appeals, the Court**

G **HELD:1. Sub-section (1) of Section 8 of Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 does not provide that the State Government shall have the power to determine the conditions of service of officers and employees of the Board. The power to control the appointment and the power to put restrictions are distinct and different from the power to determine the service** H

**conditions of the officers and servants of the Board. The control of the State Government and the power to impose restrictions as provided in sub-section (1) of Section 8 will extend to the creation of posts of officers and servants of the Board. The control can be exercised by directing the creation of different categories of posts. The control can be also exercised by determining the number of posts of different categories. In this context, Sections 94 and 95 of the 1965 Act are also relevant. Under sub-section (1) of Section 94, the State Government retains the general Rule making power of framing Rules for carrying out the purposes of the Act. Without prejudice to the generality of the power under sub-section (1), sub-section (2) of Section 95 lays down the topics and subjects on which Rule-making power can be exercised. One of the specific powers conferred by clause (b) of sub-section (2) of Section 94 on the State Government, is of framing Rules for laying down conditions of service of the Housing Commissioner. Thus, clause (nn) of sub-section (2) of Section 94 confers power on the State Government to frame Rules in respect of any matter for which regulations can be framed by the Board . Clause (f) of sub-section (1) of Section 95 specifically empowers the Board to frame Regulations governing conditions of service of officers and servants of the Board. Under clause (b) of sub-section (2) of Section 94, the State Government has a power to determine the conditions of service of the Housing Commissioner. Thus, the Legislature has specifically incorporated in Section 7 that the State Government shall have the power to determine the conditions of service of the Housing Commissioner. However, such a provision is conspicuously absent in Section 8 dealing with the appointment of servants and officers of the Board. The reason is that the power to determine the service conditions of the other officers and servants has been conferred on the Board which can be exercised by making Regulations. [Para 26][659-C-G; 660-B-H; 661-A-B]**

**2. In view of sub-section (2) of Section 95 read with clause (nn) of sub-section (2) of Section 94, Regulations, if any, framed by the Board for determining the conditions of services of its officers and servants are always subject to the Rules which may be framed by the State Government by exercising the power under clause (nn) of sub-section (1) of Section 94. Whenever**

**there is any inconsistency between the Regulations framed under clause (f) of sub-section (1) of Section 95 and the Rules framed under clause (nn) of subsection (1) of Section 94, the Rules will prevail and to that extent, the provisions of the Regulations which are repugnant to the Rules shall be void. To put it differently, the power to determine the conditions of service of the officers (except the Housing Commissioner) and servants of the Board vests in the Board, and the said power can be exercised only by framing Regulations under clause (f) of sub-section (1) of Section 95. So long as Rules are not framed by the State Government under clause (nn) of subsection (1) of Section 95 for overriding the provisions of the Regulations framed by the Board for prescribing the service conditions, the provisions of Regulations shall always govern the field. Except for the exercise of the Rule making power under clause (nn) of sub-section (1) of Section 94, there is no specific power conferred under the 1965 Act, or for that matter under the 1975 Act, on the State Government to nullify or to override the conditions of service of its officers and servants determined by the Board by the Regulations framed in the exercise of powers under clause (f) of sub-section (1) of Section 95. [Para 27][661-C-F]**

**3. This Court concurred with the view taken by this Court in *Preetam Singh's* case and answered as follows:**

**Q.1 Whether the judgment of this Court in *Preetam Singh's* case laying down that conditions of service of officers and employees do not constitute the functions of the U.P. Avas Evam Vikas Parishad lays down the correct law more so when the judgment does not refer to provisions of Sections 8, 92, 94(2)(nn)of the 1965 Act ?**

**A: The decision lays down the correct proposition of law.**

**Q.2 Whether the view expressed in *Preetam Singh's* judgment that functions of the U.P. Avas Evam Vikas Parishad are only the specific functions enumerated in Section 15 of 1965 Act which does not include the service conditions of employees of the Board lays down the correct law ? Whereas the functions of the Board referred to in other provisions of Act, Rules and**

**Regulations as has been expressly provided in Section 15(1) by use of the expression "subject to the provisions of this Act and the Rules and Regulations" shall also be functions of the Board which induces service conditions of officers and employees as per Section 95(1)(f) of the 1965 Act.**

**A: The first part of the question is answered in the affirmative. The functions of the Board are as specified in Section 15 and other relevant sections in Chapter III of the 1965 Act. The second part is answered in the negative.**

**Q.3 Whether the State Government had no jurisdiction to issue directions regarding service conditions of officers and employees of the U.P. Avas Evam Vikas Parishad under the provisions of the 1965 Act and 1975 Act and all other enabling powers with the State Government?**

**A: Answered in affirmative. But the State Government can always frame Rules in the exercise of powers under clause (nn) of sub-section (1) of Section 94 of the 1965 Act for determining the conditions of service of the servants and officers of the Board. Whenever there is any inconsistency between Regulations framed under clause (f) of sub-section (1) of Section 95 and the Rules framed under clause (nn) of sub-section (1) of Section 94, the Rules will prevail and to that extent, the provisions of the Regulations which are repugnant to the Rules shall be void. [Para 34][668-A-H]**

**4. This Court concluded as under :**

**(i) This Court upheld the decision of this Court in *Preetam Singh's* case with a modification that the State Government can always exercise the powers under clause (nn) of sub-section (1) Section 94 of the 1965 Act for determining the conditions of service of the officers (other than the Housing Commissioner) and employees of the Board. If such power is exercised, those provisions of the Regulations framed under clause (f) of sub-section (1) of Section 95 which are repugnant to the Rules, shall be void;**

**(ii) All the officers and employees of the Board who have not received the benefit of the old scheme till 07th September**

**2012 and have retired on or after 1st January 2006 shall be entitled to benefit of the new pension scheme as per the notification dated 19th May 2009 issued by the Board provided they are otherwise eligible. However, the officers and employees appointed on or after 1st April 2005 will be governed by the newly defined Contributory Pension Rules notified by the State Government;**

**(iii) Those officers and employees of the Board who have retired on or after 1st January 2006 and who have not received benefits under the old scheme till date shall be entitled to interest as directed by this Court in paragraph 21 of the decision in *Preetam Singh's* case. Even those officers and employees who are entitled to benefit of the new pension scheme in terms of the notification dated 19th May 2009 and who have taken benefits under the old scheme pursuant to the interim order dated 07th September 2012, will be entitled to interest on differential amounts, as directed in terms of paragraph 21 of the decision of this Court in *Preetam Singh's* case;**

**(iv) Those officers and employees of the Board who have accepted the benefit under the old scheme before 7th September 2012 after giving an undertaking in terms of the Office Order dated 16th January 2004 shall not be entitled to the benefit of the new pension scheme made applicable as per the notification dated 19th May 2009;**

**(v) While calculating the pension amount payable to those who are entitled to the new pension scheme in terms of the notification dated 19th May 2009, the benefit of notional pay fixation in terms of the revised pay structure with effect from 1st January 2006 shall be provided; and**

**(vi) All the officers and employees of the Board who are entitled to benefit of the revised pay structure in terms of the Government Order dated 14th January 2010 shall be provided the said benefit within a period of three months from today, if not provided earlier. While extending the said benefit, their pay shall be notionally determined as per the revised pay structure with effect from 1st January 2006. However, they shall not be entitled to arrears of salary as per the revised pay structure from 1st January 2006 till 14th January 2010. However, in the cases of the**

**employees and officers who have already received the arrears, no recovery proceedings shall be initiated against them. [Para 45][677-D-H; 678-A-G]**

*State of Uttar Pradesh v. Preetam Singh & Ors.* **(2014) 15 SCC 774 : [2014] 10 SCR 910;** *D.S. Nakara & Ors. v. Union of India* **(1983) 1 SCC 305 : [1983] 2 SCR 165** *V. Sukumaran v. State of Kerala & Anr.* **(2020) (8) SCC 106 : [2020] 6 SCR 991;** *A.R. Antulay v. Ramdas Sriniwas Nayak & Anr.* **(1984) 2 SCC 500 : [1984] 2 SCR 914;** *Dhananjaya Reddy etc. v. State of Karnataka* **(2001) 4 SCC 9 : [2001] 2 SCR 399;** *Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.* **(2008) 4 SCC 755 : [2008] 4 SCR 822;** *DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana* **(2003) 5 SCC 622 : [2003] 2 SCR 1;** *Commercial Tax Officer, Rajasthan v. Binani Cements Ltd. & Anr.* **(2014) 8 SCC 319 : [2014] 3 SCR 1;** *Harwindra Kumar v. Chief Engineer, Karmik & Ors.* **(2005) 13 SCC 300 : [2005] 5 Suppl. SCR 317;** *Institute of Chartered Accountants of India v. Price Waterhouse & Anr.* **(1997) 6 SCC 312 : [1997] 2 Suppl. SCR 267;** *State of Rajasthan & Anr. v. Prem Raj* **(1997) 10 SCC 317 : [1997] 2 SCR 60;** *Nazir Ahmed v. The King Emperor* **(1936) SCC OnLine PC 41 – referred to.**

**Case Law Reference**

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| **[2014] 10 SCR 910** | **referred to** | **Para 1** |
| **[1983] 2 SCR 165** | **referred to** | **Para 15** |
| **[2020] 6 SCR991** | **referred to** | **Para 15** |
| **[1984] 2 SCR 914** | **referred to** | **Para 16** |
| **[2001] 2 SCR 399** | **referred to** | **Para 16** |
| **[2008] 4 SCR 822** | **referred to** | **Para 16** |
| **[2003] 2 SCR 1** | **referred to** | **Para 18** |
| **[2014] 3 SCR 1** | **referred to** | **Para 20** |
| **[2005] 5 Suppl. SCR 317** | **referred to** | **Para 21** |

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| **[1997] 2 Suppl. SCR 267** | **referred to** | **Para 21** |
| **[1997] 2 SCR 60** | **referred to** | **Para 22** |

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.6622-6623 of 2022.

From the Judgment and Order dated 16.03.2018 of the High Court of Judicature at Allahabad, Lucknow Bench in Writ Petition No.12645 (S/B) of 2016 and Writ Petition No.10355 (S/B) of 2017.

With

Civil Appeal Nos.6626 And 6627 of 2022.

Ms. Aishwarya Bhati, ASG, P. N. Misra, Vishwajit Singh, V. K. Shukla, Jitendra Mohan Sharma, Nidhesh Gupta, Sr. Advs., Abhishek Kumar Singh, Pankaj Singh, Ms. Ridhima Singh, Ms. Pallavi Baghel, Ms. Anamika Yadav, Ms. B. L. N. Shivani, Nithin Choudary Pavuluri, Rajeev Kumar Dubey, Kamlendra Mishra, Mrs. Swarupama Chaturvedi,Sourabh Jain, P. K. Jain, Abhinav Kr. Shrivastav, Amrit Pradhan, S. P. Singh Rathore, P. K. Goswami, Sanpreet Singh Ajmani, Nikhil Majithia, Ms. Japneet Kaur, Ms. Vriti Gujral, Advs. for the appearing parties.

The Judgment of the Court was delivered by

**ABHAY S. OKA, J.**

1. On 10th February 2020, for the reasons recorded, a Bench of two Hon'ble judges of this Court came to the conclusion that the view taken by this Court in the case of **State of Uttar Pradesh v. Preetam Singh & Ors.**[1] (Preetam Singh's case)needs reconsideration. Under Section 3 of the Uttar Pradesh Avas Evam Vikas ParishadAdhiniyam, 1965 (for short 'the 1965 Act'), Uttar Pradesh Avas EvamVikas Parishad (for short 'the Board') was established. The basic object of the establishment of the Board was of framing and executing housing and improvement schemes in the State of Uttar Pradesh. The core issue on which the reference is made to a larger Bench is whether the act of determining service conditions of the employees and officers of the Board is one of the statutory functions of the Board.

**FACTUAL ASPECTS**

2. On 21st February 1995, the Board resolved to extend the pensionary benefits to its employees by replacing the existing Contributory Pension Scheme (for short 'the old pension scheme') with a pension/

[1] 2014 (15) SCC 774

family pension/gratuity scheme (for short 'the new pension scheme'). On 16th May 1996, the State Government accorded its consent to the new pension scheme subject to the condition that the Board will not be entitled to seek any financial assistance for the implementation of the new pension scheme.

3. By a Resolution dated 5th November 1997, the Board approved the new pension scheme. The new pension scheme was based on the pension scheme of the State Government applicable to civil servants. On 26th November 1997, State Government passed an order staying the implementation of the new pension scheme. It appears that the State Government appointed a committee of experts to examine the new pension scheme of the Board. After considering the report of the committee of experts, the State Government vide order dated 14th September 1999 vacated the stay granted earlier by imposing a condition that the scheme shall be funded from the contribution to provident fund made by the Board and that neither the State Government nor the Board shall incur financial liability by implementing the new pension scheme.

4. **Preetam Singh and others** who were the employees of the Board, filed a writ petition in Allahabad High Court. The prayer in the petition was initially confined to the challenge to the Government Order dated 14th September 1999. During the pendency of the said petition, on 7th May 2003, the State Government reiterated its earlier stand of granting no objection to the new pension scheme subject to the condition that no financial assistance shall be provided to the Board for implementing the said scheme. On 16th January 2004, the Board by an office order gave an option to its employees of either opting for the new pension scheme or continuing with the old pension scheme. In terms of the option given by the Board, according to the case of the State Government, 582 employees opted for the old pension scheme by filing necessary undertakings. On 13th September 2005, the State Government issued an order keeping its communication dated 7th May 2003 in abeyance on the ground that it was preparing comprehensive guidelines regarding the payment of pension to the employees of Public Sector Enterprises. By a communication dated 12th July 2007, the State Government purported to withdraw the approval granted earlier to the new pension scheme of the Board. The writ petition filed by **Preetam Singh and others** was amended and a challenge to the orders dated 13th September 2005 and 12th July 2007 was incorporated in the petition. During the pendency of

A the petition filed by **Preetam Singh and others,** the State Government issued an office memorandum dated 8th December 2008 for applying a revised pension, gratuity/family pension, and commutation scheme with effect from 1st January 2006 for the benefit of its employees. The said memorandum was issued in terms of the recommendations of the U.P Pay Committee, 2008. However, the employees of local bodies and public
B enterprises were specifically excluded from the applicability of the said office memorandum. Another office memorandum was issued on 8th December 2008 by the State Government for providing revised pensionary benefits to those Government servants who had retired before 1st January 2006. This order was made applicable to the employees of Public Sector
C Enterprises who were already getting pension prior to 1st January 2006. A Division Bench of Allahabad High Court by the judgment and order dated 16th January 2009 allowed the writ petition filed by **Preetam Singh & others**. The High Court quashed the orders dated 13th September 2005 and 12th July 2007 to the extent to which they related to the Board. A writ of mandamus was issued directing the Board to implement the
D new pension scheme in terms of its Regulations framed on 5th November 1997.

5. In view of the decision of the High Court, a notification dated 19th May 2009 was issued by the Board in the exercise of powers under clause (f) of sub-section (1) of Section 95 of the 1965 Act. The notification
E recorded that the Board had decided to implement the new pension scheme as admissible to the officers and employees of the State Government in terms of the Rules and Regulations set out in the said notification. The Board directed that the new pension scheme shall come into force and will apply to those officers who retired on or after 1st
F January 1996. However, it was stated that the Newly Defined Contributory Pension Rules of the State Government will be applicable to those employees of the Board who have joined the employment on or after 1st April 2005. The notification also provided that the orders issued from time to time by the State Government with respect to pension/ family pension/ gratuity shall be applicable to the officers and employees
G of the Board.

6. The decision of the High Court was challenged by the State Government before this Court in which the decision of this Court in **Preetam Singh's case**[1] was rendered. It was observed in paragraph 21 of the final judgment of this Court that the interim order dated 7th
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August 2012 passed by this Court had the effect of staying the notification dated 19th May 2009. By the interim order of this Court dated 7th September 2012, the employees of the Board were permitted to claim benefits under the old pension scheme. However, it was observed that the interim order will not come in the way of the said employees agitating their claim and also supporting the relief granted by the High Court.

7. One of the main contentions canvassed by the State of Uttar Pradesh before this Court in **Preetam Singh's case**[1] was based on provisions of sub-section (1) of Section 2 of the U.P. State Control Over Public Corporations Act, 1975 (for short 'the 1975 Act'). Section 2(1) of the 1975 Act provides that every statutory body established or constituted under any Uttar Pradesh Act shall in the discharge of its functions be guided by such directions on questions of policies as may be issued to it by the State Government notwithstanding that no such power has been expressly conferred by the statute establishing such a statutory body on the State Government. The contention of the State Government was that the orders issued on 13th September 2005 and 12th July 2007 must be deemed to have been issued in the exercise of powers under Section 2(1) of the 1975 Act.

8. While deciding **Preetam Singh's case**[1] on 24th September 2014, this Court referred to Section 15 of the 1965 Act which exhaustively incorporates the functions of the Board. This Court came to the conclusion that fixing conditions of service of its employees does not constitute a function of the Board. Therefore, this Court held that the State Government had no power to issue the directions contained in its orders dated 13th September 2005 and 12th July 2007. This Court also held that clause (f) of sub-section (1) of Section 95 of the 1965 Act vests a power in the Board to make Regulations for determining conditions of service of its officers and servants. It was held that the new pension scheme has been framed by the Board in the exercise of power under clause (f) of sub-section (1) of Section 95. While dismissing the Special Leave Petition filed by the State Government, this Court referred to the notification dated 19th May 2009 of the Board issued in the exercise of power under clause (f) of sub-section (1) of Section 95 of the 1965 Act. This Court while dismissing the appeal preferred by the State Government directed that all the eligible employees of the Board will be governed by the said notification dated 19th May 2009. This Court directed the Board to release pensionary benefits to retired employees governed by the

A notification dated 19th May 2009 within a period of three months. Paragraph 21 of the decision containing the directions issued by this Court is reproduced below:-

> "**21.** It is also necessary for us to determine the consequence of the State of Uttar Pradesh, having approached this Court, to assail
B the impugned judgment dated 16-1-2009 [*Preetam Singh* v. *State of U.P.*, 2009 SCC OnLine All 33 : (2009) 2 All LJ 702] . **This Court having entertained the petition filed by the appellant, passed interim directions on 7-8-2012 [*State of U.P.* v. *Preetam Singh*, IA No. 7 in Civil Appeal No. 6307 of**
C **2010, order dated 7-8-2012 (SC), wherein it was directed:"Taken on board. There shall be stay of the order passed in Writ Petition No. 1433 of 2011 dated 24-7-2012. IA No. 7 is disposed of. Registry is directed to list IA No. 4 on 27-8-2012, if it is in order."] , which had the effect of staying the implementation of the directions issued by the**
D **High Court, namely, of staying the implementation of the Notification dated 19-5-2009. As a result, the employees governed by the Notification dated 19-5-2009**, were paid their retiral dues under the Contributory Provident Fund Scheme. Since we have now affirmed the impugned judgment of the High Court,
E dated 16-1-2009 [*Preetam Singh* v. *State of U.P.*, 2009 SCC OnLine All 33 : (2009) 2 All LJ 702] , it is apparent that all the eligible employees of the Vikas Parishad will be governed by the Notification dated 19-5-2009. They will therefore be entitled to the pensionary benefits from the date of their retirement.
F **Undoubtedly, they have been denied the said retiral benefits, consequent upon the interim orders passed by this Court, at the behest of the State of Uttar Pradesh. In the above view of the matter, we direct the Vikas Parishad to release the pensionary benefits to the retired employees governed by the Notification dated 19-5-2009, within three**
G **months from today. While determining the pensionary benefits payable to the eligible retired employees up to date, if it is found that any of the retired employees is entitled to financial dues in excess of those already paid under the Contributory Provident Fund Scheme, the said employee(s) will be paid interest on the said amount @ 9% p.a.** The
H burden of the aforesaid interest component on the differential

amount will be discharged by the Vikas Parishad in the first instance. The same shall, however, be recovered from the State of Uttar Pradesh, who is solely responsible for the interest ordered to be paid to the employees concerned."

(emphasis added)

9. On 16th October 2009, the State Government issued an order sanctioning revised pay structure, pay band, and grade pay to different categories of employees working in public enterprises/ corporations. The revised pay structure was incorporated in the annexure to the said order. The Government Order stated that necessary action shall be taken by the public enterprises/ corporations in consultation with the Public Enterprises Department/ Finance Department. It is also provided in the Government Order that the execution of the Government Order shall be made only after a proposal to that effect is approved by the Board of Directors of the Public Sector Enterprises. On 30th November 2009, the Housing Commissioner of the Board addressed a letter to the State Government for communicating the proposal of the Board to apply the revised pay structure to its employees. In response, on 14th January 2010, the State Government issued a communication permitting the Board to grant the revised pay structure according to the recommendations of the 7th Report of the U.P Pay Committee, 2008 to its employees. The State Government permitted the Board to grant the revised pay structure to its employees as provided in the aforesaid Government Order dated 16th October 2009. The said order was issued on the basis of the recommendations of the Empowered Committee. However, it was stated in that communication that the benefit shall be calculated on a notional basis with effect from 1st January 2006 in the pay band and grade pay as per the table annexed to the Government Order dated 16th October 2009. It provided that the actual benefit shall be provided with immediate effect i.e. from 14th January 2010. In short, the employees of the Board were not entitled to arrears of pay as per the revised pay structure with effect from 1st January 2006. They were entitled to revised pay scales only on a notional basis from 1st January 2006 and to the actual benefits only from 14th January 2010. Based on the said communication, an Office Order was issued by the Board on 23rd January 2010 for giving effect to the communication dated 14th January 2010. In fact, another Government Order was issued on 15th September 2011 stating that in terms of the order dated 14th January 2010, pay scales of the employees of the Board

A will be notionally revised with effect from 1st January 2006 but the actual benefits shall be extended only from 14th January 2010. The said Government Order reiterates that the employees of the Board will not be entitled to benefit of the revised pay structure for the period of 1st January 2006 to 13th January 2010.

B 10. The State Government issued another order dated 05th May 2015 to the Board communicating the decision of the Hon'ble Governor to grant pensionary benefits to the employees of the Board in terms of the new pension scheme with retrospective effect from 1st January 2006. The decision of the State Government, inter alia, provided that the C employees who were employed on or before 31st March 2005 and who had not retired till date shall be granted pension. It further provided that the employees who had already retired and had taken benefits under the old pension scheme will not be entitled to get a pension under the new pension scheme. The Government directed that the employees of the Board who have been employed on or after 1st April 2005 will not be D entitled to grant of pension. In terms of the Government Order of 05th May 2015, the Board issued Office Order dated 13th May 2015.

11. There were two sets of writ petitions filed before the Allahabad High Court. The first one was Writ Petition No.12645 of 2016 filed by certain employees of the Board. The following prayers were made in E the petition :

> "(i) to issue a writ, order or direction in the nature of Mandamus commanding the respondents to re-determine the salary of the petitioners till their retirement and thereafter their pensionary benefits on the basis of Sixth Pay Commission Recommendation F w.e.f.1.1.2006.
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> (ii) to issue a writ, order or direction in the nature of Mandamus commanding the respondents to apply the provisions of the Government Order No.1508 dated 8.12.2008 on the officers of the Parishad, while suitably reading down the restrictive provisions about its non-application on the employees of the U.P. Awas Evam G Vikas Parishad in view of the Pension Regulations dated 19.5.2009 read with judgment and order of the Hon'ble Apex Court dated 23.9.2014.
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> (iii) to issue a writ, order or direction in the nature of mandamus commanding the respondents to re-determine/re-fix the salary of H

the petitioners in terms of Sixth Pay Commission Recommendation w.e.f. 1.1.2006 till their retirement and thereafter re-determine their pensionary benefits as per revised last pay drawn and pay arrears of salary and revised pensionary benefits from the date of their retirement till date, in accordance with G.O. dated 8.12.2008, after deducting the amounts already paid towards pensionary benefits of the petitioners, within a period of 2 months.

(iv) to issue a writ, order or direction in the nature of Mandamus commanding the respondents to grant the benefit of maximum gratuity of Rs.10 lac to the petitioners as per Government Order dated 8.12.2008.

(v) to issue a writ, order or direction in the nature of Mandamus commanding the respondents to pay arrears of salary & pensionary benefits calculated in terms of the Sixth Pay Commission Recommendation, including enhanced gratuity of Rs.10 lac, along with payment of interest at the prevailing Bank rates, within a period of 2 months.

(vi) to issue an ad-interim mandamus to the respondent authorities to pay the current pension of the petitioners in terms of Sixth Pay Commission Recommendation."

Writ Petition No.10355 of 2017 was filed by another set of employees of the Board for challenging the order dated 05th May 2015 passed by the State Government and the consequential order dated 13th May 2015 passed by the Board.

12. By the impugned judgment, the aforesaid two petitions were disposed of. While disposing of the petitions, in paragraph 41, the following directions were issued :

"41. Accordingly, both the writ petitions are allowed and the impugned orders dated 05.05.2015 and 13.05.2015 contained in Annexure No.1 and 2 to the Writ Petition o.126345 (S/B) of 2017 are quashed to the extent they are contrary to the judgment passed by the Hon'ble Apex Court in the case of State of U.P. vs. Preetam Singh and others : Civil Appeal No.6307 of 2010. **A mandamus is issued to the respondents to grant benefit of arrears of salary payable to the employees of Parishad w.e.f. 1.1.2006 to 13.01.2010 and to fix their pension/ family pension and also release gratuity in accordance with the provisions of**

**U.P. Avas Evam Vikas Parishad Regulations notified on 19th May, 2009, and in the light of the orders of the Hon'ble Supreme Court in Civil Appeal No.6307 of 2010 from the date of their entitlement alongwith interest @ 9% per annum within a period of two months from the date of production of certified copy of this order, failing which the petitioners shall be entitled and paid interest at the rate of 12% per annum.**"

(emphasis added)

**THE ORDER OF REFERENCE TO A LARGER BENCH**

13. Now, we come to the order dated 10th February 2020 passed by this Court. A Bench of two Hon'ble Judges of this Court *prima facie* found that the functions of the Board contemplated under Section 15 of the 1965 Act were wide enough even to cover the act of fixing service conditions of its employees. In paragraph 43, this Court framed three questions for consideration of a larger Bench. Paragraph 43 of the said order reads thus:

> "43. Due to the above reasons we are of the view that with regard to three aspects i.e. (1), (2) and (3) as 42 noted above, the judgment in **Preetam Singh's case** needs reconsideration. We formulate following questions to be considered by a larger Bench:
>
> (1) Whether the judgment of this Court in **Preetam Singh's case** laying down that conditions of service of officers and employees do not constitute the functions of the U.P. Avas Evam Vikas Parishad lays down the correct law more so when the judgment does not refer to provisions of Sections 8, 92, 94(2)(nn)of the 1965 Act ?
>
> (2) Whether the view expressed in **Preetam Singh's** judgment that functions of the U.P. Avas Evam Vikas Parishad are only the specific functions enumerated in Section 15 of 1965 Act which does not include the service conditions of employees of the Board lays down the correct law ? Whereas the functions of the Board referred to in other provisions of Act, Rules and Regulations as has been expressly provided in Section 15(1) by use of expression "subject to the provisions of this Act and the Rules and Regulations" shall also be functions of the Board which induces service

conditions of officers and employees as per Section 95(1)(f) of the 1965 Act.

(3) Whether the State Government had no jurisdiction to issue directions regarding service conditions of officers and employees of the U.P. Avas Evam Vikas Parishad under the provisions of the 1965 Act and 1975 Act and all other enabling powers with the State Government?

**SUBMISSIONS OF THE STATE GOVERNMENT AND THE BOARD**

14. Ms. Aishwarya Bhati, the learned Additional Solicitor General appearing for the State Government urged that the statutory functions of the Board include the function of fixing terms and conditions of the employment of its employees. She placed reliance on Section 92 of the 1965 Act which confers a power on the State Government to issue directions to the Board for carrying out the purposes of the 1965 Act. She urged that it is the duty of the Board to comply with the directions issued by the State Government. It was further submitted that apart from Section 2(1) of the 1975 Act, there was sufficient power vesting in the State Government under Section 8 of the Section 1965 Act to control and put restrictions on the powers of the Board to appoint officers and employees. The learned ASG invited our attention to the notification dated 19th May 2009 by which the Board applied the new pension scheme to the employees who retired on or after 1st January 1996. She pointed out that in the said notification, it is specifically directed that the orders with respect to pension/family pension/gratuity issued by the State Government from time to time shall also be applicable to the officers and employees of the Board. She pointed out that the said notification was never challenged. She would, therefore, submit that the directions of the State Government impugned by the private respondents cannot be faulted. After inviting our attention to the interim order dated 7th September 2012 passed by this Court, the learned ASG submitted that those who have unconditionally opted for the old pension scheme prior to 7th September 2012 have no subsisting right to claim the pension in terms of the new pension scheme. She submitted that the employees are not entitled to salary as per the revised pay structure for the period between 1st January 2006 to 13th January 2010 as per the binding directions of the State Government. The learned senior counsel representing the Board also made similar submissions.

A **THE SUBMISSIONS OF THE PRIVATE RESPONDENTS**

15. The learned counsel appearing for the respondents in Civil Appeal Nos.6624 and 6625 of 2022 also made legal submissions. We may note here that while reserving the judgment on 15th September 2022, we had detagged the said appeals. Nevertheless, we are also considering
B the submissions made by the respondents in the detagged appeals as regards the three questions of law that are required to be decided. The submission of the learned counsel is that as several employees were facing financial hardships after their retirement, they had no option but to give the undertakings to accept the old pension scheme and not opt for the new pension scheme. Considering this situation, this Court by an
C interim order passed in **Preetam Singh's case**[1]had directed that even if employees have taken benefit of the old pension scheme by giving an undertaking, they will be entitled to the benefit of the new pension scheme in terms of the notification dated 19th May 2009. The learned counsel invited our attention to the subsequent order dated 5th May 2015 passed
D by the State Government by which the benefit of the new pension scheme was denied to those who opted to join the employment of the Board on or after 1st April 2005. His submission is that this direction is discriminatory which creates two classes of pensioners without any rational basis. He relied upon a decision of this Court in the case of **D.S. Nakara & Ors. v. Union of India**[2] as well as another decision in the case of **V. Sukumaran v. State of Kerala & Anr.**[3]. He would, therefore, submit
E that reconsideration of the view taken in **Preetam Singh's case**[1] is not at all warranted.

16. Shri Nidhesh Gupta, the learned senior counsel stated that he represents only those respondents who had never opted for the old pension
F scheme and had not received any amount under the old scheme. He submitted that under clause (f) of sub-section (1) of Section 95 of the 1965 Act, the Board has a power to make Regulations providing for conditions of service of officers and servants of the Board. Inviting our attention to sub-section (2) of Section 95 of the 1965 Act, Shri Gupta
G would submit that only when any Regulation framed by the Board is repugnant to the Rules framed by the State in the exercise of powers under Section 94, the Rules will prevail. He submitted that admittedly the State Government has not exercised the Rule making power under

[2] 1983 (1) SCC 305
H [3] 2020 (8) SCC 106

Section 94. He urged that under clause (nn) of sub-section (2) of Section 94, the State Government has a power to frame Rules concerning any matter for which Regulations can be framed under Section 95. He submitted that it is well settled that when an enactment requires that a certain thing should be done in a certain way, the thing must be done in that way or not at all. He relied upon various decisions in this behalf, viz., **A.R. Antulay** v. **Ramdas Sriniwas Nayak & Anr.**[4]; **Dhananjaya Reddy etc.** v. **State of Karnataka**[5]; and **Gujarat Urja Vikas Nigam Ltd.** v. **Essar Power Ltd.**[6].

17. Inviting our attention to Section 2(1) of the 1975 Act, he submitted that the power conferred by the said provision on the State Government to issue directions is a general power. This power is confined to issuing directions on questions of policies. He submitted that the said power can be exercised in relation to the discharge of functions of the Board. He urged that Section 15 of Chapter III of the 1965 Act lays down the functions of the Board. He pointed out that Chapter III requires the Board to frame various schemes. He urged that none of the clauses (a) to (p) of Section 15 lays down that the appointment of employees and fixing their service conditions is a function of the Board under the 1965 Act. He urged that in the exercise of power under Section 2(1) of the 1975 Act, directions cannot be issued regarding the service conditions of officers and employees of the Board.

18. By referring to Section 7 of the 1965 Act, he submitted that sub-section (2) thereof clearly provides that the conditions of service of the Housing Commissioner shall be such as may be prescribed. Relying upon the definition of the word 'prescribed' in clause (n) of Section 2, he submitted that the conditions of service of the Housing Commissioner have to be prescribed by the State Government by exercising the Rule making power. However, Section 8 which provides for the appointment of officers and servants of the Board does not contain such a provision. He submitted that the special or general orders of the State Government contemplated by sub-section (1) of Section 8 can be issued only regarding the mode and manner of appointment of the officers and servants of the Board and the same have nothing to do with service conditions. The power of the State Government to issue general or special orders is only for the purpose of imposing control and restrictions on the appointment

[4] (1984) 2 SCC 500
[5] (2001) 4 SCC 9
[6] (2008) 4 SCC 755

A of the officers and servants of the Board. Therefore, sub-section (1) of Section 8 cannot be construed to mean that by issuing general or special orders, the State Government can determine the conditions of service of the officers and servants of the Board. He submitted that as two different expressions have been used in Sections 7 and 8 of the 1965 Act, different meanings will have to be assigned to the said different expressions. On this issue, he relied upon a decision of this Court in the case of **DLF Qutab Enclave Complex Educational Charitable Trust** v. **State of Haryana**[7].

19. He urged that the power under sub-section (2) of Section 92 can be exercised by the State Government by issuing directions that are necessary for carrying out the purposes of the 1965 Act. He submitted that in any event, in the present case, statutory Regulations have been framed by the Board dealing with the grant of pensionary benefits.

20. He submitted that the power to issue directions under Section 2(1) of the 1975 Act is a general power and the power under Sections 8 and 92 of the 1965 Act is a specific or special power. Relying upon a decision of this Court in the case of **Commercial Tax Officer, Rajasthan** v. **Binani Cements Ltd. & Anr.**[8], he urged that the specific provisions under the 1965 Act will prevail over the general provision under Section 2(1) of the 1975 Act.

21. He relied upon a decision of this Court in the case of **Harwindra Kumar** v. **Chief Engineer, Karmik & Ors.**[9]. He submitted that executive order cannot override the exercise of power made by the Board by framing Regulations concerning the new Pension Scheme. He submitted that if the submission of the State Government that by issuing executive orders it can override the provisions of the Regulations framed under Section 95 of the 1965 Act is accepted, the entire scheme of Sections 94 and 95 of the 1965 Act will be rendered completely redundant. Relying upon a decision of this Court in the case of **Institute of Chartered Accountants of India** v. **Price Waterhouse & Anr.**[10], he would submit that such an interpretation cannot be accepted.

22. He pointed out that if the pension is not granted on the basis of revised pay scales, the very purpose of the grant of pension will be defeated. He submitted that employees cannot be divided into two

[7] (2003) 5 SCC 622
[8] (2014) 8 SCC 319
[9] (2005) 13 SCC 300
[10] (1997) 6 SCC 312

classes – one of those who retired pre-1996 and others of who retired post-1996. He submitted that there was no justification for the Bureau of Public Enterprises for writing a letter dated 14th January 2010 conferring the benefit of the revised pension not from 1st January 2006 but from 14th January 2010. He submitted that no explanation has been offered either before the High Court or this Court for fixing the date of 14th January 2010. He relied upon a decision of this Court in the case of **State of Rajasthan & Anr.** v. **Prem Raj**[11].

23. He pointed out that the benefit of the revised pension was given by the State Government to the employees of U.P Power Corporation with effect from 1st January 2006. To the employees of U.P Jal Nigam, the benefit of the revised pension was given only from 12th April 2010. The employees of Jal Nigam filed a writ petition before the High Court which was allowed by holding that the employees were entitled to get the benefit of the revised pension from 1st January 2006. The said decision has become final as a Special Leave Petition filed by the State Government against the said order has been dismissed on 20th May 2022. He submitted that the Board has adequate resources to bear the burden of payment of revised pension from 1st January 2006. His submission is that the law laid down by this Court in the case of **Preetam Singh's case**[1] does not call for any reconsideration at all.

## CONSIDERATION OF THE QUESTIONS FRAMED

24. The three questions framed under Order dated 10th February 2020 are inter-connected. For deciding these three questions, we will have to decide the core issues whether the functions of the Board are confined to those which are set out in Section 15 of the 1965 Act and whether the appointment of officers and employees of the Board and the determination of their conditions of service constitute the functions of the Board. Another question that will have to be addressed is as regards the power, if any, of the State Government to issue directions to the Board concerning the determination of the conditions of service of its officers and servants.

## POWER TO DETERMINE THE CONDITIONS OF SERVICE OF THE OFFICERS AND SERVANTS OF THE BOARD

25. We have perused the provisions of the 1965 Act. Chapter II thereof has the heading, "Establishment and conduct of business of the

[11] (1997) 10 SCC 317

A Board". Chapter II consists of Sections 3 to 14. Section 3 provides for the constitution of the Board. Section 7 provides for the appointment of a Housing Commissioner. Section 7 reads thus :

> "**7. Provisions relating to Housing Commissioner.**-(1) There shall be a Housing Commissioner appointed by the State Government for the purposes of this Act.
>
> **(2) The conditions of service of the Housing Commissioner shall be such as may be prescribed.** He shall be remunerated from the Board's fund.
>
> (3) The State Government may, if it is of opinion that special circumstances so require, appoint the Housing Commissioner to be the Adhyaksh in addition to his own duties.
>
> (4) The State Government may also appoint the Housing Commissioner as an authority under any other law for the time being in force."
>
> (emphasis added)

Section 8 deals with "Appointment of Officers and Servants". Section 8 reads thus :

> "**8. Appointment of officers and servants.**-(1) **Subject to such control and restrictions as may from time to time be imposed by the State Government, by special or general orders, the Board may appoint such officers and servants as it considers necessary for the efficient performance of its functions.**
>
> (2) the Board may, with the previous approval of the State Government appoint a servant of the Central or the State Government or of a local authority on any of the posts under it on such terms and conditions as may be agreed upon."
>
> (emphasis added)

As provided in sub-section (1) of Section 7, the Housing Commissioner has to be appointed by the State Government. Sub-section (2) of Section 7 provides that the conditions of service of the Housing Commissioner must be prescribed by the Rules. Rule-making power under Section 94 vests with the State Government. Clause (b) of sub-section (2) of Section 94 empowers the State Government to frame

Rules determining the conditions of service of the Housing Commissioner. The obvious reason for conferring the power to determine service conditions of the Housing Commissioner on the State Government appears to be that the State Government is the appointing authority.

26. In contrast, sub-section (1) of Section 8 provides that subject to control and restrictions imposed from time to time by the State Government by special or general orders, the Board may appoint such officers and servants as it considers necessary for the efficient performance of its functions. There is a marked distinction between the language used by sub-section (2) of Section 7 and sub-section (1) of Section 8 though both provisions deal with the power to appoint officers of the Board. Thus, two different expressions or terminologies have been used in Sections 7 and 8. Therefore, the legislature intended to convey different meanings. Sub-section (1) of Section 8 does not provide that the State Government shall have the power to determine the conditions of service of officers and employees of the Board. The power to control the appointment and the power to put restrictions are distinct and different from the power to determine the service conditions of the officers and servants of the Board. The control of the State Government and the power to impose restrictions as provided in sub-section (1) of Section 8 will extend to the creation of posts of officers and servants of the Board. The control can be exercised by directing the creation of different categories of posts. The control can be also exercised by determining the number of posts of different categories. In this context, Sections 94 and 95 of the 1965 Act are also relevant. Under sub-section (1) of Section 94, the State Government retains the general Rule making power of framing Rules for carrying out the purposes of the Act. Without prejudice to the generality of the power under sub-section (1), sub-section (2) of Section 95 lays down the topics and subjects on which Rule-making power can be exercised. One of the specific powers conferred by clause (b) of sub-section (2) of Section 94 on the State Government, as pointed out earlier, is of framing Rules for laying down conditions of service of the Housing Commissioner. Clause (nn) of sub-section (2) of Section 94 reads thus :

> "94. Power to make Rules.- (1) … … … …
>
> (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-
>
> … … … …

A … … … …

(nn) any matter for which regulation may be made by the Board under Section 95;

… … … …"

B Thus, clause (nn) of sub-section (2) of Section 94 confers power on the State Government to frame Rules in respect of any matter for which regulations can be framed by the Board. Section 95 which confers the powers on the Board to frame Regulations reads thus :

"**95. Power to make regulations.-**(1) The Board may, by notification in the *Gazette*, make regulations providing for –

C

(a) ……;

(b) ……;

(c) ……;

D (d) ……;

(e) the duties of officers and servants of the Board;

**(f) the conditions of service of officers and servants of the Board;**

E (g) ……;

(h) ……;

(i) ……;

(j) ……;

F (k) ……;

(l) ……;

(m) ……;

(n) any other matter which is to be or may be provided for by regulations under this Act or the rules."

G

(emphasis added)

Clause (f) of sub-section (1) of Section 95 specifically empowers the Board to frame Regulations governing conditions of service of officers and servants of the Board. Under clause (b) of sub-section (2) of Section

H 94, the State Government has a power to determine the conditions of

service of the Housing Commissioner. Thus, the Legislature has specifically incorporated in Section 7 that the State Government shall have the power to determine the conditions of service of the Housing Commissioner. However, such a provision is conspicuously absent in Section 8 dealing with the appointment of servants and officers of the Board. The reason is that the power to determine the service conditions of the other officers and servants has been conferred on the Board which can be exercised by making Regulations.

27. In view of sub-section (2) of Section 95 read with clause (nn) of sub-section (2) of Section 94, Regulations, if any, framed by the Board for determining the conditions of services of its officers and servants are always subject to the Rules which may be framed by the State Government by exercising the power under clause (nn) of sub-section (1) of Section 94. Whenever there is any inconsistency between the Regulations framed under clause (f) of sub-section (1) of Section 95 and the Rules framed under clause (nn) of sub-section (1) of Section 94, the Rules will prevail and to that extent, the provisions of the Regulations which are repugnant to the Rules shall be void. To put it differently, the power to determine the conditions of service of the officers (except the Housing Commissioner) and servants of the Board vests in the Board, and the said power can be exercised only by framing Regulations under clause (f) of sub-section (1) of Section 95. So long as Rules are not framed by the State Government under clause (nn) of sub-section (1) of Section 95 for overriding the provisions of the Regulations framed by the Board for prescribing the service conditions, the provisions of Regulations shall always govern the field. Except for the exercise of the Rule making power under clause (nn) of sub-section (1) of Section 94, there is no specific power conferred under the 1965 Act, or for that matter under the 1975 Act, on the State Government to nullify or to override the conditions of service of its officers and servants determined by the Board by the Regulations framed in the exercise of powers under clause (f) of sub-section (1) of Section 95.

**FUNCTIONS OF THE BOARD**

28. Now coming to the issue of the functions of the Board, we may note that Chapter III of the 1965 Act has the heading "Functions and Powers of the Board". As noted earlier, specific provisions regarding the appointment of the Housing Commissioner, officers and servants of the Board find a place in Chapter II and not in Chapter III. As specifically

provided in clause (1) of Section 8, the Board is empowered to appoint such officers and servants as it considers necessary for the efficient performance of its functions. This is one factor that suggests that the appointment of officers and servants is not a function of the Board but their appointments are required to be made for the efficient performance of its functions.

29. Chapter III dealing with "Functions and Powers of the Board" comprises of Sections 15 to 49. Section 15 has the heading "Functions of the Board" which reads thus :

"**15. Functions of the Board.**-(1) Subject to the provisions of this Act and the rules and regulations, the functions of the Board shall be-

(a) to frame and execute housing and improvement schemes and other projects;

(b) to plan and co-ordinate various housing activities in the State and to ensure expeditious and efficient implementation of housing and improvement schemes in the State;

(c) to provide technical advice for and scrutinise various projects under housing and improvement schemes sponsored or assisted by Central Government or the State Government;

(d) to assume management of such immovable properties belonging to the State Government as may be transferred or entrusted to it for this purpose;

(e) to maintain, use, allot, lease, or otherwise transfer plots, buildings and other properties of the Board or of the State Government placed under the control and management of the Board;

(f) to organise and run workshops and stores for the manufacture and stock-piling of building materials;

(g) on such terms and conditions as may be agreed upon between the Board and the State Government, to declare houses constructed by it in execution of any scheme to be houses subject to the U.P. Industrial Housing Act, 1955 (U.P. Act No.XXIII of 1955);

(h) to regulate building operations;

(i) to improve and clear slums;

(j) to provide roads, electricity, sanitation, water-supply and other civic amenities and essential services in areas developed by it;

(k) to acquire movable and immovable properties for any of the purposes before mentioned;

(l) to raise loans from the market, to obtain grants and loans from the State Government, the Central Government, local authorities and other public corporations, and to give grants and loans to local authorities, other public corporations, housing co-operative societies and other persons for any of the purposes before mentioned;

(m) to make investigation, examination or survey of any property or contribute towards the cost of any such investigation, examination or survey made by any local authority or the State Government;

(n) to levy betterment fees;

(o) to fulfil any other obligation imposed by or under this Act or any other law for the time being in force; and

(p) to do all such other acts and things as may be necessary for the discharge of the functions before mentioned.

(2) Subject to the provisions of this Act and the rules and regulations, Board may undertake, where it deems necessary, any of the following functions, namely-

(a) to promote research for the purpose of expediting the construction of and reducing the cost of buildings;

(b) to execute works in the State on behalf of public institutions local authorities and other public corporations, and departments of the Central Government and the State Government;

(c) to supply and sell building materials;

(d) to co-ordinate, simplify and standardise the production of building materials and to encourage and organise the

A prefabrication and mass production of structural components;

(e) with a view to facilitating the movement of the population in and around any city, municipality, town area or notified area to establish, maintain and operate any transport B service; to construct, widen strengthen or otherwise improve roads and bridges and to give financial help to others for such purposes;

(f) to do all such other acts and things as may be necessary for the discharge of the functions before mentioned."

C As the appointments of officers and servants of the Board are dealt with by Sections 7 and 8 in Chapter II, the same do not find a place in the functions of the Board set out either in Section 15 or in any other Section in Chapter III. There are provisions incorporated in Chapter III dealing with various schemes and the powers of the Board which can D be exercised for the implementing the schemes.

30. Chapter V of the 1965 Act provides for the Board of acquiring and disposing of land for the purposes of the Act. Under Section 59, the Board is empowered to issue debentures. Under Section 58(3), the Board is entitled to raise loans for the purposes of the Act. Obviously, acquiring E and selling the property, issuing debentures, and raising loans cannot be the functions of the Board. These powers have been conferred by Chapter V to enable the Board to effectively discharge its functions and to exercise its powers specified in Chapter III. The nature of the functions of a statutory body like the Board will always depend on the object of establishing such a body. The appointment of officers and servants needs F to be made for the efficient performance of the specific functions of the Board. The exercise of power to appoint servants and officers of the Board and determination of their service conditions cannot constitute the functions of the Board. The powers under Chapter V and the power of appointing officers and servants under Sections 7 and 8 of Chapter II G need to be exercised for ensuring proper discharge of the functions of the Board as well as for the exercise of the powers set out in Chapter III. We are, therefore, of the considered view that the appointment of officers and servants and determination of their service conditions cannot constitute functions of the Board.

H

**POWER OF THE STATE GOVERNMENT TO ISSUE DIRECTIONS TO THE BOARD REGARDING THE DETERMINATION OF THE SERVICE CONDITIONS OF THE BOARD**

31. Section 92 which provides for Control of the State Government over the Board is a part of Chapter X under the heading "External Control". Section 92 reads thus :

> "**92. Control of the State Government over the Board and other local authorities.**-(1) The Board shall-
>
> (a) submit to the State Government such reports and returns in such forms and at such intervals as may be prescribed;
>
> (b) furnish to the State Government such documents, returns, statements, estimates or other information regarding any matter under the control of the Board as may be directed by the State Government.
>
> (2) **The State Government may give the Board such directions as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall thereupon be the duty of the Board to comply with such directions.**
>
> (3) Without prejudice to other provisions of this Act, and notwithstanding anything contained in any other law for the time being in force, the State Government may give any local authority such directions as in its opinion are necessary or expedient for enabling the Board to carry out the purposes of this Act; and thereupon it shall be the duty of the local authority to comply with such directions."
>
> (emphasis added)

The power under sub-section (2) of section 92 is to be exercised for issuing directions for carrying out the purposes of the 1965 Act. The issue is whether the State Government can exercise the power under sub-section (2) of Section 92 to override statutory Regulations framed by the Board in the exercise of powers under clause (f) of sub-section (1) of Section 95. If the State Government desires to override or nullify such Regulations, there is a specific provision under the said Act of 1965 which enables the State Government to do so. On a conjoint reading of clause (nn) of sub-section (1) of Section 94 and sub-section (2) of Section

95, the State Government has the power to frame Rules determining the service conditions of the officers and servants of the Board and once the Rules are framed by the State Government in this behalf, the provisions of the Regulations framed by the Board will apply only to the extent to which they are not repugnant to the Rules. Service conditions will necessarily include salary, perquisites, allowances, retirement benefits such as pension, etc. The Regulations framed by the Board under clause (f) of sub-section (2) of Section 95 have a force of law. On a plain reading of sub-section (2) of Section 92, by no stretch of the imagination, by issuing directions, the State Government can nullify the statutory Regulations framed under Section 95. More so, when the 1965 Act itself specifically enables the State Government to nullify the Regulations by exercising the Rule making power. As the scheme of the 1965 Act specifically provides that Regulations framed under Section 94 can be overridden by framing Rules in accordance with clause (nn) of sub-section (1) of Section 94, the act of overriding the Regulations must be done only by framing the Rules and not in any other manner. This view is supported by a series of decisions of this Court taking a consistent view that where an enactment requires to do a certain thing in a certain way, the thing must be done in that way and in no other manner. There are several decisions taking that view ending with the decision of this Court in the case of **Gujarat Urja Vikas Nigam**[6]. However, the *locus classicus* on this point is the well-known decision of the Privy Council in the case of **Nazir Ahmed** v. **The King Emperor**[12]. It was held by Privy Council that

> "where a power is given to do certain things in a certain way, the things must be done in that way and not at all. Other methods of performance are certainly forbidden".

The upshot of the aforesaid discussion is that the State Government has no power to issue directions under sub-section (2) of Section 92 to nullify or override the Regulations framed by the Board in the exercise of powers under clause (f) of sub-section (1) of Section 95.

32. Another argument of the State Government is based on sub-section (1) of Section 15 which opens with an expression "subject to the provisions of this Act and the rules and regulations". By use of the said expression, the exercise of the power to frame Regulations for determining the conditions of service of officers and servants does not

[12] 1936 SCC OnLine PC 41

become a function of the Board. The meaning of the opening part of sub-section (1) of Section 15 is that the functions of the Board must be discharged subject to the constraints of the Rules and Regulations framed under the 1965 Act.

33. Next limb of the argument of the State Government is based on Section 2(1) of 1975 Act. Section 2(1) reads thus :

> "**2. (1)Power to issue directions to statutory bodies**.-Every statutory body (by whatever name called), established or constituted under any Uttar Pradesh Act, excepting Universities governed by the Uttar Pradesh State Universities Act, 1973, as re-enacted and amended by the Uttar Pradesh University (re-enactment and Amendment Act), 1974, **shall, in the discharge of its functions, be guided by such directions on questions of policies, as may be given to it by the State Government, notwithstanding that no such power has expressly been conferred on the State Government under the law establishing or constituting such statutory body**."
>
> (emphasis added)

On a plain reading of the aforesaid provision, the power to issue directions vested in the State Government can be exercised only for issuing directions confined to questions of policies. The directions can be issued confined to policies concerning the discharge of the functions of the Statutory Body. The directions issued by the State Government on the questions of policies guide every statutory body in the discharge of its functions. For the reasons we have already recorded while dealing with sub-section (2) of Section 92 of the 1965 Act, even the power under Section 2(1) of the 1975 Act cannot be invoked to nullify the statutory Regulations framed by the Board which have a force of law. That can be done only by exercising the Rule making power under clause (nn) of sub-section (1) of Section 94 of the 1965 Act. The power under Section 2(1) of the 1975 Act is the general power that must yield to the special powers conferred by the 1965 Act. The power under sub-section (1) of Section 2 is different and distinct from the power to frame statutory Rules.

## CONCLUSIONS ON THE THREE QUESTIONS

34. The aforesaid discussion is sufficient to answer the three questions framed. Subject to what we have held above, we concur with

A the view taken by this Court in **Preetam Singh's case**[1]. Our answers to the three questions are as under :

**Q.1** Whether the judgment of this Court in **Preetam Singh's case** laying down that conditions of service of officers and employees do not constitute the functions of the U.P. Avas Evam Vikas Parishad lays down the correct law more so when the judgment does not refer to provisions of Sections 8, 92, 94(2)(nn)of the 1965 Act ?

B

**A:** The decision lays down the correct proposition of law.

**Q.2** Whether the view expressed in **Preetam Singh's** judgment that functions of the U.P. Avas Evam Vikas Parishad are only the specific functions enumerated in Section 15 of 1965 Act which does not include the service conditions of employees of the Board lays down the correct law ? Whereas the functions of the Board referred to in other provisions of Act, Rules and Regulations as has been expressly provided in Section 15(1) by use of the expression "subject to the provisions of this Act and the Rules and Regulations" shall also be functions of the Board which induces service conditions of officers and employees as per Section 95(1)(f) of the 1965 Act.

C

D

**A:** The first part of the question is answered in the affirmative. The functions of the Board are as specified in Section 15 and other relevant sections in Chapter III of the 1965 Act. The second part is answered in the negative.

E

**Q.3** Whether the State Government had no jurisdiction to issue directions regarding service conditions of officers and employees of the U.P. Avas Evam Vikas Parishad under the provisions of the 1965 Act and 1975 Act and all other enabling powers with the State Government?

F

**A:** Answered in affirmative. But the State Government can always frame Rules in the exercise of powers under clause (nn) of sub-section (1) of Section 94 of the 1965 Act for determining the conditions of service of the servants and officers of the Board. Whenever there is any inconsistency between Regulations framed under clause (f) of sub-section (1) of Section 95 and the Rules framed under clause (nn) of sub-section (1) of Section 94, the Rules will prevail and to that extent, the provisions of the Regulations which are repugnant to the Rules shall be void.

G

H

**CONSIDERATION OF THE ANCILLARY ISSUES CONCERNING THE RELIEFS GRANTED UNDER THE IMPUGNED JUDGMENT**

35. After having decided the questions, we are of the view that Civil Appeals can be decided in terms of our findings instead of sending them back to the Bench of two Hon'ble Judges.

**PENSION**

36. Now, we proceed to deal with the ancillary issues. Now coming to the new pension scheme, an Office Order was issued on 16th January 2004 by the Board recording that a proposal for framing a scheme of pension was under consideration. The Office Order dated 16th January 2004 provided that those employees who were not interested in opting for the new pension scheme must file an affidavit on stamp paper of Rs.10/-. In the said affidavit, it must be clearly and specifically asserted that the beneficiary was not interested in the new pension scheme and the entire amount deposited by him as his share along with Board's share should be paid to the beneficiary. It was also provided that the affidavit must state that in the future, the beneficiary will not claim pensionary benefits before any authority or the Court. According to the stand taken by the State Government, total of 582 employees/officers opted for the old scheme by filing affidavits/undertakings. The State Government has placed on record a copy of the affidavit of respondent no.1 – Virendra Kumar in one of the appeals. It is not disputed that all the affidavits of the employees who decided not to opt for the new pension scheme are in the same format. In the affidavit, it was incorporated that the employee was not interested at all in the pension scheme and he was interested in taking payments under the old scheme. It is specifically stated that he will not make any claim in respect of the new pension scheme.

37. After the State Government accorded its approval, on 05th November 1997 the Board passed a Resolution approving the new pension Scheme. The High Court while allowing the petitions filed by Preetam Singh and others, directed the Board to implement the new pension scheme in terms of its decision dated 05th November 1997. High Court allowed the petition on 16th January 2009. For giving effect to the decision, on 19th May 2009, the Board issued a notification recording that in the exercise of the powers under clauses (f) and (n) of sub-section (1) of

A Section 95 of the 1965 Act, it has decided that the pension scheme and gratuity admissible to the officers and servants of the State Government shall be admissible to the employees of the Board. The relevant part of the said notification reads thus :

"…. …. ….

B Now therefore, the U.P. Avas Evam Vikas Parishad, in exercise of the power under clause (f)(i) & (n) of sub-section (1) of Section 95 of U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 (U.P. Act 1 of 1966) has decided that the Pension/Family Pension and Gratuity admissible to the officers and employees of State C Government, which is governed by the following rules, schemes and Government orders shall also be admissible (excluding Pension commutation) to the officer and employees of the U.P. Avas Evam Vikas Parishad :

| | | | |
|---|---|---|---|
| D | 1. | Civil Service Regulations as applicable in UP. As amended | |
| | 2. | Uttar Pradesh Liberalized Pension Rules, 1961 | do |
| | 3. | U.P. Retirement Benefit Rules, 1961 | do |
| | 4. | New Family Pension Scheme, 1965 | do |
| E | 5. | All orders of finance department of U.P. Government as related to pension/ family pension/Gratuity | do |
| | 6. | Newly defined Contributory Pension rules According to notification no.Sa-3-379/ Das-2005-301(9)/2003, dated March 28, 2005 applicable to officers and employees of State Govt., who joined services on April 01, 2005 on onwards | do |

F **The orders with respect to the Pension/Family Pension/ Gratuity issued time to time by the State Govt. shall also be applicable to the officers and employees of U.P. Avas Evam Vikas Parishad.**

G

H

It has also been decided by the Parishad that General Provident Funds Rules, 1985, shall be applicable to the officer and employees of U.P. Avas Evam Vikas Parishad instead of Contributory Provident Fund (CPF) Regulations, 1973.

In GPF Rules and Govt. Rules/Orders issued in this regard, 'Govt.' means the 'U.P. Avas Evam Vikas Parishad', 'Accountant General' means 'finance Controller of U.P. Avas Evam Vikas Parishad' & 'Head of Department' means 'Housing Commissioner'.

The State Government shall not provide any financial assistance for the implementation of the said Pension Scheme.

**Contents of the notification shall come into force w.e.f. January 1, 1996 and such officers and employees of Avas Evam Vikas Parishad who have retired on or after the said date shall be benefited with the said decision.**

**Newly defined Contributory Pension Rules notified by the State Government shall be applicable to those employees who have joined Parishad services on April 01, 2005 or onwards."**

(emphasis added)

Thus, the new pension scheme was retrospectively brought into force from 1st January 1996 and was made applicable to the employees and officers of the Board who retired on or after that date. It is also recorded therein that the newly defined Contributory Pension Rules notified by the State Government shall be applicable to those employees of the Board who have joined the employment from 1st April 2005 onwards. Thus, the applicability of the new pension scheme was confined to the officers and employees who retired on or after 1st January 1996. The officers and employees appointed on or after 1st April 2005 were excluded from the applicability of the new pension scheme. We must note here that the notification dated 19th May 2009 has become final and in none of the petitions which are the subject matter of these appeals, the same was challenged. In fact, in Writ Petition No.10355 of 2017, there was a prayer to issue a mandamus to implement the notification. Moreover, in paragraph 21 of the decision of this Court in **Preetam Singh's case**[1],this Court issued a mandate to act upon the said notification. The notification dated 19th May 2009 specifically states that

A the orders with respect to the pension/ family pension/ gratuity issued from time to time by the State Government shall be applicable to the officers and servants of the Board. Thus, only those employees of the Board who have retired on or after 1st January 2006 will be entitled to the benefit of the new pension scheme and those who are appointed on or after 1st April 2005 will be governed by another set of Rules as mentioned in the notification dated 19th May 2009.

38. In the Special Leave Petition filed by the State Government against the judgment of the Allahabad High Court in the case of Preetam Singh and others, an interim order was passed by this Court on 7th August 2012 which had the effect of staying the judgment of the High Court and the notification dated 19th May 2009. The further interim order dated 7th September 2012 recorded that if the employees of the Board, who have retired from service, claim Contributory Provident Fund and other retiral benefits (as per the old scheme), the Board shall pass appropriate orders granting the benefit under the old scheme. However, it was clarified that the said interim order will not come in the way of the respondents before this Court agitating their claim and supporting the reliefs granted by the Allahabad High Court. Paragraph 21 of the judgment records that by the interim order, the notification dated 19th May 2009 was stayed, and therefore, no one could get pension under the new scheme. Therefore, the interim order was passed which enabled the employees who had not received benefits either under the old scheme or the new pension scheme, to take benefits under the old scheme. This interim order was made as no one could get the benefit of the old scheme as a result of the stay granted to the notification dated 19th May 2009. The interim order dated 7th September was thus applicable only to those employees who had not taken benefits under the old scheme till 7th September 2012. Obviously, those officers and employees of the Board who opted for the old scheme by filing affidavits in terms of the Office Order dated 16th January 2004 and received the benefits under the old scheme before the interim order dated 07th September 2012 was passed, are disentitled to claim pension under the new pension scheme. Those officers and employees of the Board who opted to take benefits under the old scheme after 07th September 2012 will be entitled to benefit of the direction issued by this Court in paragraph 21 of the decision in **Preetam Singh's case**[1] regarding the payment of pension under the new pension scheme and the payment of interest on the differential amount.

39. The State Government issued two Office Memoranda on 08th December 2008. The first was regarding the revision of pension/ gratuity/ family pension and commutation with effect from 1st January 2006 on the basis of recommendations of the U.P. Pay Committee, 2008. The said order specifically recorded that it will not apply to local bodies and public enterprises. The second Office Memorandum dated 08th December 2008 was issued for applying revision of pension and family pension in respect of the employees who have retired prior to 1st January 2006. Obviously, the second Office Memorandum is not relevant as the new pension scheme of the Board was made applicable to those who retired on or after 1st January 2006 as provided in the notification dated 19th May 2009. The first Office Memorandum dated 08th December 2008 which excluded the officers and employees of the Board was challenged belatedly for the first time in 2016 in Writ Petition No.126445 of 2016. We may note here that the Board's notification dated 19th May 2009 was issued in the exercise of Regulation making power under clause (f) of sub-section (1) of Section 95 of the 1965 Act which provided that orders issued by the State Government from time to time with respect to pension/ family pension/ gratuity shall be applicable to the officers and employees of the Board. No part of the regulations framed by the Board on 19th May 2009 was ever challenged. Therefore, the officers and employees of the Board who were the beneficiaries under the notification dated 19th May 2009 were bound by the first Memorandum dated 08th December 2008 and the orders passed from time to time by the State Government with regard to pension and family pension. Moreover, revised pension was granted to the State Government employees as the recommendations of U.P Pay Committee, 2008 were made applicable to them. The said recommendations were applied to the employees of the Board on 14th January 2010. We may note here that the Allahabad High Court, by the impugned judgment, has not set aside or modified the Office Memorandum dated 08th December 2008.

40. On 16th October 2009, the State Government issued an order making applicable revised pay structure in terms of the report of the 7th U.P. Pay Committee, 2008 to the public enterprises and corporations subject to the terms and conditions incorporated therein. The Board, by a letter dated 30th November 2009, informed the State Government of its decision to apply the revised pay structure. It was sought to be argued by some of the respondents that the order dated 14th January 2010 relates to pension. In fact, it only deals with the applicability of the revised pay

A structure to the employees and officers of the Board. By the order dated 14th January 2010, the State Government communicated its decision to allow the Board to apply the revised pay structure on a notional basis with effect from 1st January 2006 in the pay band and grade pay in the revised pay structure as per the table enclosed to the Government Order dated 16th October 2009. The said order recorded that the benefit of pay
B structure shall be granted with immediate effect to the officers and employees of the Board by calculating the benefit on a notional basis with effect from 1st January 2006. The Office Order was issued by the Board on 23rd January 2010 for implementation of the aforesaid order dated 14th January 2010. The meaning of the order dated 16th January
C 2010 was that the actual benefit of the revised pay structure will be available immediately from that date by calculating the pay on a notional basis in terms of the revised pay structure with effect from 1st January 2006. In other words, the order dated 14th January 2010 made it clear that the officers and employees of the Board will not be entitled to revised
D pay from 1st January 2006 till 14th January 2010 and that they will get the benefit of revised pay only from 14th January 2010. But, while calculating the revised pay with effect from 14th January 2010, the benefit of the revised pay structure was to be notionally provided from 1st January 2006. Thus, the pay fixation as of 14th January 2010 must be made by notionally granting the benefit of the new pay structure with effect from
E 1st January 2006. The communication dated 15th January 2011 of the State Government addressed to the Housing Commissioner of the Board records that the officers and employees of the Board will not be entitled to arrears of revised pay for the period from 1st January 2006 to 13th January 2010. None of these orders of 16th October 2009, 14th January
F 2010, and 15th January 2011 were concerning pension. These orders deal only with the grant of a revised pay structure. But, the computation of pension has to be made on the basis of the applicable pay structure. Hence, those who retired on or after 1st January 2006 and those who were entitled to benefit of the new pension scheme under the notification dated 19th May 2009 will be benefitted from the revised pay structure to
G the extent that their pension will have to be calculated on the basis of revision of pay structure on notional basis from 1st January 2006.

41. On 05th May 2015, the State Government issued another order regarding pensionary benefits to the officers and employees of the Board in terms of which Office Order dated 13th May 2015 was issued. The
H gist of the said order dated 05th May 2015 is as under :

(i) Such staff of U.P. Avas and Vikas Parishad whose recruitment was done on or before 31 March 2005 and who have not retired till date, will be entitled to pension;

(ii) Such staff of U.P. Avas and Vikas Parishad who had retired and had taken all the benefits under the C.P.F. Scheme after getting retired, will not be entitled to pension;

(iii) Such staff of U.P. State Avas and Vikas Parishad whose recruitment was done on or after 1st April 2005 will not be entitled get the pension; and

(iv) In the light of the order of this Court in Preetam Singh's case, the 9% interest is not payable to any retired staff in C.P.F. Scheme. In future, if the question of paying interest to any staff member arises, then the Board will bear the said expense by itself and no claim can be made from the government.

The directions in the above terms were incorporated in the consequential order issued by the Board on 13th May 2015. Notification dated 19th May 2009 issued by the Board clearly provides that all the officers and employees who retired on or after 1st January 2006 will be entitled to benefit of the new pension scheme but those who were employed on or after 1st April 2005 will be entitled to benefits under the newly defined Contributory Pension Rules of the State Government. To that extent, clause (i) of the Government Order dated 5th May 2015 will require modification. Even clause (ii) will require clarification in terms of this Judgment. Those officers and employees who have already taken benefit of the old scheme before 07th September 2012 by giving undertakings will not get the benefit of the new pension scheme but those who have taken the benefit of the old scheme after the date of the interim order dated 7th September 2012 will be entitled to take benefit of the new pension scheme. Clause (iii) of the order means that in view of the notification dated 19th May 2009, those who are appointed on or after 1st April 2005 will not get the benefit of the new pension scheme under the said notification. As regards clause (iv), interest will be payable in terms of the decision of this Court in **Preetam Singh's case**[1], only to those employees and officers who had not taken benefit of the old scheme before the interim order dated 07th September 2012 was passed by this Court. Interest in terms of the decision of this Court will be payable on differential amounts, to those who have taken benefits under the old

A scheme after 07th September 2012. To the above extent, the directions of this Court issued in **Preetam Singh's case**[1] will have to be clarified.

**ARREARS OF PAY IN TERMS OF REVISED PAY STRUCTURE**

42. Now, the other issue which survives is whether the officers
B and employees are entitled to arrears of pay as per the revised pay structure for the period between 1st January 2006 to 13th January 2010. The impugned judgment proceeds on the footing that the order of the State Government directing that the officers and employees of the Board will get the benefit of the new pay structure notionally from 1st January
C 2006 and actually from 14th January 2010 is issued in the exercise of power under Section 2(1) of 1975 Act and Section 92(2) of the 1965 Act. Therefore, the High Court held that the State Government could not have issued the said direction regarding the determination of conditions of service as the determination of the conditions of service was not a function of the Board.

D 43. As far as the applicability of the pay structure to the employees and officers of the Board is concerned, there is no material placed on record to show that the Regulation making power under Section 95 was at all exercised by the Board regarding applying revised pay structure applicable to the State Government employees to its own employees. All
E that the Board did was to implement the order of the State Government dated 14th January 2010 by granting a revised pay structure to its employees. The said order is based on the order of the State Government issued on 16th October 2009 by which a decision was taken to apply the revised pay structure applicable to the State Government employees to the employees of public sector enterprises on the terms and conditions
F incorporated therein. As noted earlier, by exercising the Rule making power under clause (nn) of sub-section 2 of Section 94 of the 1965 Act, the State Government could have always determined the pay scales of the officers and employees of the Board. If it is held that the State Government had no power to issue the orders dated 16th October 2009
G and 14th January 2010, the employees of the Board will not get the benefit of the revised pay structure made applicable to the Government employees as the Board has not framed the Regulations under clause (f) of sub-section (1) of Section 95 of the 1965 Act providing for the grant of revised pay structure to the employees. Surprisingly, in paragraph 22 of the impugned judgment, the High Court has held that the orders
H dated 16th October 2009 and 14th January 2010 would have no applicability

in the matter of laying down the conditions of service of the employees of the Board. If this finding is upheld, the employees of the Board will be completely deprived of the benefit of the revised pay structure as there is no Regulation made by the Board operating in the field. Hence, the employees of the Board will be entitled to the revised pay structure in terms of the said orders as clarified by the further order dated 15th September 2011.

44. The grant of arrears from 1st January 2006 till 14th January 2010 will involve huge financial implications for the Board. Financial constraint is a valid ground for denying arrears as per the revised pay structure. The decision to provide the benefit of a higher pay structure to the officers and employees of the Board was taken by the State Government subject to the condition of not paying arrears for the period between 1st January 2006 and 14th January 2010. Therefore, we cannot approve the direction issued by the High Court under the impugned judgment to pay arrears of wages as per the new pay structure for the period from 1st January 2006 to 14th January 2010.

45. Hence, our conclusions are as under :

(i) We uphold the decision of this Court in **Preetam Singh's case**[1] with a modification that the State Government can always exercise the powers under clause (nn) of sub-section (1) Section 94 of the 1965 Act for determining the conditions of service of the officers (other than the Housing Commissioner) and employees of the Board. If such power is exercised, those provisions of the Regulations framed under clause (f) of sub-section (1) of Section 95 which are repugnant to the Rules, shall be void;

(ii) All the officers and employees of the Board who have not received the benefit of the old scheme till 07th September 2012 and have retired on or after 1st January 2006 shall be entitled to benefit of the new pension scheme as per the notification dated 19th May 2009 issued by the Board provided they are otherwise eligible. However, the officers and employees appointed on or after 1st April 2005 will be governed by the newly defined Contributory Pension Rules notified by the State Government;

(iii) Those officers and employees of the Board who have retired on or after 1st January 2006 and who have not received

A benefits under the old scheme till date shall be entitled to interest as directed by this Court in paragraph 21 of the decision in **Preetam Singh's case**[1]. Even those officers and employees who are entitled to benefit of the new pension scheme in terms of the notification dated 19th May 2009 and who have taken benefits under the old scheme pursuant to the interim order dated 07th September 2012, will be entitled to interest on differential amounts, as directed in terms of paragraph 21 of the decision of this Court in **Preetam Singh's case**[1];

C (iv) Those officers and employees of the Board who have accepted the benefit under the old scheme before 7th September 2012 after giving an undertaking in terms of the Office Order dated 16th January 2004 shall not be entitled to the benefit of the new pension scheme made applicable as per the notification dated 19th May 2009;

D (v) While calculating the pension amount payable to those who are entitled to the new pension scheme in terms of the notification dated 19th May 2009, the benefit of notional pay fixation in terms of the revised pay structure with effect from 1st January 2006 shall be provided; and

E (vi) All the officers and employees of the Board who are entitled to benefit of the revised pay structure in terms of the Government Order dated 14th January 2010 shall be provided the said benefit within a period of three months from today, if not provided earlier. While extending the said benefit, their pay shall be notionally determined as per the revised pay structure with effect from 1st January 2006. However, they shall not be entitled to arrears of salary as per the revised pay structure from 1st January 2006 till 14th January 2010. However, in the cases of the employees and officers who have already received the arrears, no recovery proceedings shall be initiated against them.

G The impugned judgment and order stands modified in terms of the above conclusions. The civil appeals are disposed of accordingly with no order as to costs.

Ankit Gyan Appeals disposed of.
(Assisted by : Aarsh Choudhary, LCRA)