[2025] 5 S.C.R. 217 : 2025 INSC 491

Satish Chander Sharma & Ors.
v.
State of Himachal Pradesh & Ors.

(Writ Petition (Civil) No. 179 of 2018)

16 April 2025

[Surya Kant, Dipankar Datta and Ujjal Bhuyan,* JJ.]

Issue for Consideration

Issue arose as to whether the decision in *State of H.P. v. Rajesh Chander Sood,* upholding the cut-off date of 02.12.2004, is *per incuriam*; whether the aforesaid decision is binding on the petitioners; whether a writ petition under Article 32 of the Constitution is maintainable to directly or collaterally challenge a judgment of the Supreme Court.

Headnotes†

Constitution of India – Article 32 – Judgment/Order of Supreme Court passed u/Article 136, not amenable to judicial review u/Article 32 – In a matter, High Court allowed the writ petitions filed by another group of petitioners directing the State to provide pension to the retired employees of the Himachal Pradesh State Forest Development Corporation Limited (Corporation) in terms of the Himachal Pradesh Corporate Sector Employees (Pension, Family Pension, Commutation of Pension and Gratuity) Scheme, 1999 – Said decision was reversed by a two-Judge Bench of this Court in State of H.P. v. Rajesh Chander Sood – Present petition u/Article 32 filed by the petitioners, retired officers of the Corporation challenging the decision in *Rajesh Chander Sood* as *per incuriam*, aggrieved by denial of pensionary benefits to them in terms of the 1999 Scheme discontinued vide the notification dated 02.12.2004, which carved out an exception for those who had opted for the scheme and had superannuated prior to 02.12.2004:

Held: In *Rajesh Chander Sood*, this Court held that the State Government was justified in postulating a cut-off date by which some of the employees governed by the 1999 Scheme (those who had retired prior to 02.12.2004 were entitled to draw pension under the 1999 Scheme whereas those who had not retired by the time

* Author

the repeal notification was issued on 02.12.2004 were denied such benefit) – It was held that the State Government had the competence to repeal the 1999 Scheme and by doing so, it did not curtail the right of the employees to receive pension rather they would continue to receive pension under the erstwhile pension scheme however, would not get the additional benefits under the 1999 Scheme – This Court had given elaborate reasons while allowing the civil appeal and upholding the cut-off date of 02.12.2004 – *Rajesh Chander Sood* did not ignore any binding precedent and is not *per incuriam* – When this Court had set aside the judgment of the High Court, the claim of not only those petitioners but similarly situated employees (like the present petitioners) were also negatived – *Rajesh Chander Sood* is thus, binding on the petitioners – Furthermore, Judgment and order of this Court passed u/Article 136 of the Constitution of India is not amenable to judicial review u/Article 32 of the Constitution – Thus, there cannot be any challenge either directly or collaterally to the decision of this Court in *Rajesh Chander Sood* in a proceeding u/Article 32 – Present writ petition is misconceived. [Paras 21.5, 22, 23, 28, 32]

Administration of justice – Adjudication process – Principle of finality – Finality of lis, core facet of judicial system – Emphasized:

Held: Litigation which had concluded or had reached finality cannot be reopened – A litigant who is aggrieved by a decision rendered by Supreme Court in a special leave petition or in a civil appeal arising therefrom can seek its review by invoking the review jurisdiction and thereafter through a curative petition – But such a decision cannot be assailed in a writ proceeding u/Article 32 of the Constitution of India – If this is permitted, then there will be no finality and no end to litigation creating chaos in the administration of justice – Constitution of India – Article 32. [Para 30]

Case Law Cited

State of H.P. v. Rajesh Chander Sood **[2016] 6 SCR 851 : (2016) 10 SCC 77 – held not *per incuriam.***

Naresh Shridhar Mirajkar v. State of Maharashtra **[1966] 3 SCR 744 : AIR 1967 SC 1 – followed.**

Sub-Inspector Sadhan Kumar Goswami v. Union of India **[1996] Supp. 7 SCR 814 : (1997) 2 SCC 225;** *Indian Council for*

Enviro-Legal Action v. Union of India **[2011] 9 SCR 146 : (2011) 8 SCC 161;** *Khoday Distilleries Ltd. v. Registrar General, Supreme Court of India* **[1995] Supp. 6 SCR 190 : (1996) 3 SCC 114 – relied on.**

R.R. Verma v. Union of India **[1980] 3 SCR 478 : (1980) 3 SCC 402;** *BALCO Employees' Union v. Union of India* **[2001] Supp. 5 SCR 511 : (2002) 2 SCC 333;** *D.S. Nakara v. Union of India* **[1983] 2 SCR 165 : (1983) 1 SCC 305;** *Rupa Ashok Hurra v. Ashok Hurra* **[2002] 2 SCR 1006 : (2002) 4 SCC 388;** *A.R. Antulay v. R.S. Nayak* **[1988] Supp. 1 SCR 1 : (1988) 2 SCC 602;** *Omprakash Verma v. State of Andhra Pradesh* **[2010] 15 SCR 302 : (2010) 13 SCC 158;** *Green View Tea & Industries v. Collector* **(2002) 1 SCC 109;** *Indian Council for Enviro-Legal Action v. Union of India* **(2011) 8 SCC 161 – referred to.**

P.D. Nanda v. State of H.P., **2013 SCC Online HP 5151 – referred to.**

List of Acts

Constitution of India; Himachal Pradesh Corporate Sector Employees (Pension, Family Pension, Commutation of Pension and Gratuity) Scheme, 1999; Central Civil Services (Pension) Rules, 1972; Central Civil Services (Commutation of Pension) Rules, 1981.

List of Keywords

Writ Petition; Article 32 of the Constitution of India; Judgment of Supreme Court not amenable to judicial review under Article 32; Direct or collateral challenge to the judgment of the Supreme Court; Rajesh Chander Sood case; Not per incuriam; Binding precedents; Finality of lis; Principle of finality of an adjudication process; Review Petition; Curative Petition; Himachal Pradesh State Forest Development Corporation Limited; Himachal Pradesh Corporate Sector Employees (Pension, Family Pension, Commutation of Pension and Gratuity) Scheme, 1999; Denial of Pensionary Benefits; Administration of justice; Finality of an order of the Supreme Court.

Case Arising From

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 179 of 2018

(Under Article 32 of The Constitution of India)

Appearances for Parties

Advs. for the Petitioners:
Gopal Sankarnarayan, Sr. Adv., Anand Varma, Ms. Adyasha Nanda, Ms. Aditi Gupta.

Advs. for the Respondents:
Devadatt Kamat, Sr. Adv., Anubhav Sharma, Gaurav Prakash Pathak, Nishant Kumar, Rajesh Inamdar, Ajay Desai, Revanta Solanki, Abhyudaya Bajpai, Gopal Prasad, Ms. Shalya Agarwal.

Judgment / Order of the Supreme Court

Judgment

Ujjal Bhuyan, J.

Heard learned counsel for the parties.

2. This is a petition filed by three petitioners under Article 32 of the Constitution of India. Petitioners are retired officers of Himachal Pradesh State Forest Development Corporation Limited (briefly 'the Corporation' hereinafter). They are aggrieved by denial of pensionary benefits to them in terms of the Himachal Pradesh Corporate Sector Employees (Pension, Family Pension, Commutation of Pension and Gratuity) Scheme, 1999 discontinued *vide* the notification dated 02.12.2004, which though carved out an exception for those who had opted for the scheme and had superannuated prior to 02.12.2004. Hence, they seek a direction to the respondents for payment of pension to them upon their superannuation in terms of the said scheme at par with similarly situated employees who had retired prior to 02.12.2004, by counting their pensionable service from the date of joining till the date of their superannuation.

3. This issue was earlier raised by a group of petitioners before the Himachal Pradesh High Court ('High Court' hereinafter) by filing writ petitions under Article 226 of the Constitution of India, the lead case being *P.D. Nanda Vs. State of H.P.,*[1] CWP No. 4425 of 2009. The High Court had allowed the writ petitions *vide* the judgment and order dated 19.12.2013 by directing the State to provide pension to

1 2013 SCC Online HP 5151

the retired employees of the Corporation in terms of the aforesaid scheme. This decision was reversed by a two-Judge Bench of this Court in *State of H.P. Vs. Rajesh Chander Sood.*[2]

4. Thereafter, the present writ petition came to be filed before this Court seeking the same relief. Various contentions have been raised including the one that the decision in *Rajesh Chander Sood* (supra) has ignored several binding precedents of this Court and is, therefore, a decision rendered *per incuriam.*

5. This Court issued notice *vide* the order dated 20.03.2018. In the said order, a two-Judge Bench of this Court, after observing that since correctness of this Court's judgment in *Rajesh Chander Sood* (supra) has been questioned, requested the learned Chief Justice to place the matter before a three-Judge Bench. This is how the matter has been placed before the present Bench and heard accordingly.

6. Though learned senior counsel for the respondent-State has raised a preliminary objection as to maintainability of the present writ petition, we are of the view that such an objection may be considered while considering the stand of the respondents.

7. At the outset, it would be apposite to advert to the relevant facts.

8. The Corporation was incorporated under the Companies Act, 1956 pursuant to a notification dated 26.03.1974 issued by the Government of Himachal Pradesh. It is completely owned and controlled by the State Government inasmuch as 100% of the share capital of the Corporation is owned by the State of Himachal Pradesh.

9. Petitioner No. 1 was appointed as a Clerk in the Corporation on 29.10.1975. On 27.03.1981, he was promoted to the post of Junior Assistant. He was further promoted to the post of Senior Assistant(Senior Accountant) on 07.11.1984. He was promoted to the post of Office Manager(Junior) on 03.04.1989 and, thereafter, to the post of Office Manager (Senior) on 17.11.2011. Petitioner No. 1 superannuated from service on 31.01.2013.

   9.1. Petitioner No. 2 was appointed as a Clerk in the Corporation on 15.02.1988. He was promoted to the post of Senior Clerk on 15.02.1993 and, thereafter, to the post of Junior Assistant

2 (2016) 10 SCC 77

on 01.01.1996. He was further promoted to the post of Senior Assistant on 07.09.2009 whereafter he was promoted to the post of Office Manager (Junior) from which post he superannuated on 30.09.2016.

9.2. Petitioner No. 3 was appointed to the post of Clerk in the Corporation on 05.12.1981. He was promoted to the post of Senior Clerk on 24.05.1985 and, thereafter, to the post of Junior Assistant on 25.04.1992. He was further promoted to the post of Senior Assistant on 24.12.1993. On 08.11.2013, petitioner No. 3 was promoted to the post of Office Manager (Junior) whereafter he superannuated on 30.11.2014.

10. It is stated that following the revision of pay scales of government employees by the State Government, the Corporation also allowed such revision of pay scales.

11. Since the employees of government corporations like the Corporation enjoyed parity with employees of the State Government *qua* all conditions of service, such as, pay scales, allowances etc., the State Government issued a notification dated 29.10.1999 whereby employees of government corporations i.e. state public sector undertakings like the Corporation were extended parity even as regards pensionary benefits. This scheme was called the Himachal Pradesh Corporate Sector Employees (Pension, Family Pension, Commutation of Pension and Gratuity) Scheme, 1999 (referred to hereinafter as 'the 1999 Scheme') and came into effect on and from 01.04.1999. It was mentioned that all pensionary benefits of the employees of the corporate sector were to be determined in accordance with the provisions laid down in the Central Civil Services (Pension) Rules, 1972 and the Central Civil Services (Commutation of Pension) Rules, 1981, as amended, and adopted by the Himachal Pradesh Government for the state government employees. The 1999 Scheme contemplated exercise of option by the employees of the corporate sector as to whether he or she would be governed under the existing statutory provisions or be governed under the 1999 Scheme which contemplated creation of a pension fund. The entire amount of contribution of the concerned public sector undertaking including interest thereon to the Contributory Provident Fund (CPF) upto 31.03.1999 were to be transferred to the corpus fund (pension fund) to be administered and maintained by the Government of

Himachal Pradesh in the Finance Department. It was clarified that the existing employees who had opted for the 1999 Scheme would automatically forfeit their claim to the employers' share of CPF including interest thereon to the State Government upto 31.03.1999. However, the amount of their subscriptions alongwith interest would be transferred to the General Provident Fund (GPF) account, to be allotted and maintained by the concerned public sector undertaking.

12. It is stated that the Corporation had amended its byelaws in order to implement the 1999 Scheme. The three petitioners had exercised their option in favour of the 1999 Scheme since this scheme provided for higher pensionary benefits.

13. It appears that reservations were expressed regarding the financial stability of the 1999 Scheme. In the above backdrop, the State Government constituted a High Level Committee ('Committee' hereinafter) in 2003 (21.01.2003) to review the financial viability of the 1999 Scheme. After a detailed analysis, the Committee submitted a report on 28.10.2003. The Committee was of the view that the 1999 Scheme was not viable on a self-sustaining basis for the following reasons:

    i) uncertainty in the rate of interest regime;

    ii) declining recruitment in the corporate sector would deplete the size of the corpus to be created and it would be difficult to honour liabilities accruing after 10-12 years;

    iii) the pension plan envisages payment of pension to corporate sector employees as is being paid to the government employees. Government employees at present are entitled to pension @ 50% of the basic pay last drawn with linkage to their dearness allowance. This return does not appear to be possible from the pension fund proposed to be created for corporate sector employees.

14. After considering the aforesaid report, Government of Himachal Pradesh in the Finance Department issued a notification dated 02.12.2004 whereby the 1999 Scheme was repealed with immediate effect. It was clarified that consequent upon the repeal, barring the employees who had retired from service w.e.f. 01.04.1999 till the date

of notification i.e. 02.12.2004, other employees would continue to be covered under those provisions which were applicable to them as on 31.03.1999. While clarifying that the public sector undertakings would be the pension sanctioning/ disbursing authority, the employers' share of CPF including interest thereon was transferred to the respective public sector undertakings who were required to form a pension fund. In so far those employees of the public sector undertakings who had retired from service during the period w.e.f. 01.04.1999 till the date of publication of the notification i.e. 02.12.2004, the repeal notification stated as follows:

> Notwithstanding such repeal, the employees of Himachal Pradesh corporate sector who retired from service w.e.f. 01.04.1999 till the date of publication of this notification shall continue to be governed under the provisions of the scheme so repealed; provided such retired employees had opted for such scheme and had otherwise become eligible for pension under the scheme.

15. A large number of writ petitions were filed before the High Court assailing the notification dated 02.12.2004 and seeking a direction that pension of the retired employees of the Corporation should be paid as per the 1999 Scheme. High Court *vide* the judgment and order dated 19.12.2013 allowed all the writ petitions. The cut-off date 02.12.2004 was declared *ultra vires* but instead of declaring the notification dated 02.12.2004 as unconstitutional, the same was read down by including the writ petitioners and similarly situated employees who had become members of the 1999 Scheme and had retired after 02.12.2004 as well as those employees who were already in service when the 1999 Scheme was notified and had become members of that scheme and would retire henceforth as eligible for pension under the 1999 Scheme.

16. The aforesaid decision of the High Court was assailed by the State before this Court in *Rajesh Chander Sood* (supra). A two-Judge Bench of this Court held that it was well within the authority of the State Government in exercise of its administrative powers which it had exercised by issuing the impugned repeal notification dated 02.12.2004 to fix a cut-off date for continuing the right to receive pension for some and denying the same to others. The Bench further held that the government was free to alter its earlier administrative decision and policy though it should be in consonance with all legal

and statutory obligations. The Bench noted that it was not a case where the rights which had accrued to the employees under the Employees' Provident Fund Scheme, 1995 under which the employees were covered prior to their opting for the 1999 Scheme, had in any manner been altered to their disadvantage. All that the repeal notification dated 02.12.2004 says is that the concerned employees would be entitled to all the rights which had accrued to them under the Employees' Provident Fund Scheme, 1995 and not under the 1999 Scheme. In so far the *bona fides* of the State Government were concerned, the Bench observed that the State Government as a welfare measure had ventured to honestly extend some post-retiral benefits to the employees of independent legal entities like the Corporation on the mistaken belief, arising out of a miscalculation, that the same could be catered out of the available resources. This measure was adopted by the State Government not in its capacity as the employer of the respondent-employees but as a welfare measure. When it became apparent that the welfare measure extended by the State Government could not be sustained as originally understood, the same was withdrawn. Thus, the action of the State Government was *bona fide*. State Government had taken a conscious decision and the classification made by the State Government by fixing 02.12.2004 as the cut-off date was reasonable and justifiable in law; it also had a nexus to the object sought to be achieved. In the circumstances, the decision of the High Court was interfered with.

17. Mr. Gopal Sankaranarayan, learned senior counsel for the petitioners submits that the present proceeding is concerned with the pensionary rights and entitlement of the petitioners. This is also concerned with the correctness of the judgment rendered in *Rajesh Chander Sood* (supra). This Court while issuing notice *vide* the order dated 20.03.2018, *prima facie*, agreed with the contention of the petitioners that the judgment in *Rajesh Chander Sood* (supra) required re-consideration by a three-Judge Bench.

    17.1. Learned senior counsel submits that the judgment in *Rajesh Chander Sood* (supra) is not good law and is *per incuriam* as it fails to consider binding precedents of coordinate and larger benches of this Court. Further, in the said judgment, the Bench contradicted itself by acknowledging the vested right of the employees under the 1999 Scheme but denying the benefits accruing therefrom to them.

17.2. Learned senior counsel has referred to paragraphs 69, 70, 71 and 72 of the judgment in *Rajesh Chander Sood* (supra) and submits that the Bench had recorded a finding that having exercised their option for the 1999 Scheme and having forgone all their rights under the Employees Provident Fund Scheme, 1995, the employees concerned would be covered by the 1999 Scheme. As soon as they came to be covered by the 1999 Scheme, a contingent right came to be vested in them. As a matter of fact, the Bench had rejected the contention of the State that the rights of the employees under the 1999 Scheme would be vested only upon attaining the age of superannuation and accepted the contention advanced by the employees that any employee governed by a pension scheme, would be entitled to the benefits therefrom on attaining the qualifying service immediately on his enrolment in the said scheme, particularly, when they had expressly chosen to forgo their rights under the Employees' Provident Fund Scheme, 1995.

17.3. Adverting to clause 1(2) of the 1999 Scheme, it is submitted by the learned senior counsel for the petitioners that the terms of clause 1(2) are clear and unambiguous. By way of incorporation, the Central Civil Services (Pension) Rules, 1972 and the Central Civil Services (Commutation of Pension) Rules, 1981, stood applicable to the employees upon their opting for the 1999 Scheme.

17.4. In *Rajesh Chander Sood* (supra), after acknowledging the vested right of the pensioners, this Court considered the issue of cut-off date. He submits that while this Court has upheld fixation of a cut-off date for extending better and higher pensionary benefits, there are no precedents whereby a cut-off date for discontinuing the right to receive pension, *inter se*, a homogeneous class has been sustained. He submits that reliance placed on the decisions of this Court in *R.R. Verma Vs. Union of India*[3] and *BALCO Employees' Union Vs. Union of India,*[4] was wholly misplaced as those two decisions were rendered in different contexts.

3 (1980) 3 SCC 402

4 (2002) 2 SCC 333

17.5. He further submitted that the judgment in *Rajesh Chander Sood* (supra) sustaining the retrospective withdrawal of the 02.12.2004 notification whereby and whereunder pensionary rights of only those who had superannuated between 01.04.1999 and 02.12.2004 were saved as opposed to saving such rights of all those employees who were in service between 01.04.1999 and 02.12.2004 was explicitly contrary to the principles laid down by this Court in a large number of judgments. If the 1999 Scheme had to be repealed due to the purported object i.e. financial burden on the State, repealing of the same by not saving the rights of all those already covered under the 1999 Scheme would be violative of Article 14 of the Constitution of India.

17.6. Learned senior counsel submits that the cut-off date postulated by the notification dated 02.12.2004 providing that benefits under the 1999 Scheme would be available to those who had retired between 01.04.1999 and 02.12.2004 (date of the notification) thereby dividing a homogeneous class without having any reasonable nexus with the object sought to be achieved would be violative of Article 14 of the Constitution of India. In this connection, he has referred to and relied upon the Constitution Bench decision of this Court in *D.S. Nakara Vs. Union of India*.[5] He submits that prior judgments of this Court wherein similar cut-off dates based on the date of retirement were struck down by this Court were not considered in *Rajesh Chander Sood* (supra).

17.7. Mr. Gopal Sankaranarayan, learned senior counsel submits that the right to receive pension is a vested right and once the petitioners had opted for the 1999 Scheme, the same could not have been withdrawn, that too, unilaterally on the ground that the State did not have the financial means to support the scheme. Right to receive pension is not dependent upon the finances of the State. It was improper for the State Government to shrug away its responsibility post-introduction of the 1999 Scheme by labelling it as a self-financing pension fund created under the 1999 Scheme. This critical aspect was over-looked in *Rajesh Chander Sood* (supra).

5 (1983) 1 SCC 305

17.8. He further submits that contention of the employees based on Article 300A of the Constitution of India was also summarily rejected by the Bench without any independent analysis. When this Court had recognized that the 1999 Scheme created a vested right on the employees, such a statutory right to receive pension would be in terms of the Central Civil Services (Pension) Rules, 1972. Such a statutory right therefore has to be construed as a property right under Article 300A of the Constitution of India.

17.9. He, therefore, submits that *Rajesh Chander Sood* (supra) is not a good law and is *per incuriam*. The present writ petition seeking pensionary rights of the petitioners as per the 1999 Scheme may, thus, kindly be allowed by this Court.

18. *Per contra*, Mr. Devadatt Kamat, learned senior counsel representing the State of Himachal Pradesh submits that the present writ petition filed under Article 32 of the Constitution of India is totally misconceived inasmuch as the issue raised in the writ petition i.e. entitlement of the petitioners to pension under the 1999 Scheme at par with similarly situated employees of the Corporation who had retired between 01.04.1999 and 02.12.2004 has already been decided by this Court in *Rajesh Chander Sood* (supra) . On this ground alone, the writ petition is liable to be dismissed.

18.1. Thereafter, learned senior counsel has adverted to the facts of the present case and submits that all the issues raised in the present proceeding were raised in *Rajesh Chander Sood* (supra) and adjudicated by this Court.

18.2. Learned senior counsel submits that the High Court had allowed the earlier batch of writ petitions *vide* the judgment and order dated 19.12.2013. This was challenged by the State before this Court in *Rajesh Chander Sood* (supra) which came to be decided on 28.09.2016. Though the present petitioners had superannuated before that, they did not join the aforesaid proceedings. As a matter of fact, they did not also participate in the proceedings before the High Court. Much after their superannuation, they filed the present writ petition. There is, thus, considerable delay and laches on the part of the petitioners in approaching this Court which would, therefore, disentitle them to any relief.

18.3. Learned senior counsel vehemently argues that the present writ petition is nothing but a collateral challenge to a binding judgment of this Court in *Rajesh Chander Sood* (supra). It is not open to the petitioners to raise the same set of grounds urged in *Rajesh Chander Sood* (supra) which were rejected by this Court. A writ petition cannot be filed to doubt the correctness of a decision of this Court, he submits.

18.4. Learned senior counsel submits that the principle of *per incuriam* is not at all attracted to the facts of the present case. There is no glaring omission of law and precedent to constitute *per incuriam*.

18.5. On the merits of the case, learned senior counsel submits that financial viability or non-viability was a valid consideration taken into account by the State while issuing the repeal notification. The High Level Committee had examined the issue threadbare and, thereafter, submitted report. Based on the report of the High Level Committee, the repeal notification was issued.

18.6. Learned senior counsel submits that petitioners were not employees of the State Government and, therefore, they cannot seek service benefits including retiral benefits at par with State Government employees. State Government had introduced the 1999 Scheme as a welfare measure for the employees of public sector undertakings like the Corporation as a welfare State and not as an employer. But when it was found that available resources were inadequate for funding the 1999 Scheme, the same was withdrawn. However, the interest of those employees who had opted for the 1999 Scheme and had retired before issuance of the repeal notification were protected inasmuch as they were held to be entitled to the benefits under the 1999 Scheme. The intention was not to deprive the employees who had retired during the subsistence of the 1999 Scheme.

18.7. Therefore, he submits that fixation of the date of issuance of the repeal notification as the cut off date for allowing those employees who had retired prior thereto to be entitled to the benefits under the 1999 Scheme, cannot be said to be arbitrary and violative of Article 14 of the Constitution of India.

18.8. Learned senior counsel asserts that the 1999 Scheme was an outcome of a policy decision of the State Government. Withdrawal of the same is also within the realm of policy making. There is no arbitrariness in such withdrawal. Principle of natural justice cannot be extended to such a situation. In the circumstances, learned senior counsel Mr. Kamat submits that there is no merit at all in the writ petition, besides being not maintainable. He, therefore, seeks dismissal of the writ petition.

19. Submissions made by learned counsel for the parties have received the due consideration of the Court. A large number of decisions have been cited at the Bar by both the sides. Those have been considered. However, reference would be made to only those decisions found relevant and necessary.

20. At the outset, let us examine as to how the High Court had dealt with the issue. In *P.D. Nanda* (supra), High Court held that the moment the employees became members of the 1999 Scheme, they had acquired a vested right and therefore they were required to be heard before they were taken out of the ambit of the 1999 Scheme. High Court observed that when the 1999 Scheme was framed and notified on 29.10.1999 having effect from 01.04.1999, the State Government was aware of all the legal implications but there was remissness on the part of the State Government as well as the public sector undertakings towards implementation of the 1999 Scheme. The public sector undertakings were required to immediately transfer the funds at their disposal towards creation of the corpus fund. When the employees had opted for the 1999 Scheme, they automatically ceased to be members of the previous 1995 Scheme. Therefore, withdrawal of the 1999 Scheme was improper. Though the High Court found the notification dated 02.12.2004 to be bad in law, it expressed the view that to effectuate the purport of the 1999 Scheme, the said notification was required to be read down by including those employees who became members of the scheme and had retired before 02.12.2004 as entitled to the benefits under the 1999 Scheme, instead of declaring the same to be unconstitutional. High Court also rejected the contention of the State Government that the 1999 Scheme could not be implemented due to financial crunch. While allowing the writ petitions, High Court declared the

cut-off date of 02.12.2004 to be *ultra vires*. The repeal notification dated 02.12.2004 was read down by including those writ petitioners and similarly situated employees for the purpose of pensionary benefits. High Court held as follows:

> **80.** Accordingly, in view of the analysis and discussion made hereinabove, all the writ petitions are allowed. The cut-off date 02.12.2004 is declared ultra vires. Notification dated 02.12.2004 is read down to save it from unconstitutionality, irrationality, arbitrariness or unreasonableness by including the petitioners and similarly situated employees also, who had become members of the scheme notified on 29.10.1999 and have retired after 02.12.2004 and those employees who were already in service when the pension scheme was notified on 29.10.1999 and had become members of that scheme and shall retire hereinafter, for the purpose of pensionary benefits after applying the principle of severability. The Regional Provident Fund Commissioner, Shimla is directed to transfer the entire amount of the CPF to a corpus fund to be administered and maintained by the Government of Himachal Pradesh in the Finance Department including upto date interest, within a period of two weeks. Thereafter, the Pension Sanctioning Authority is directed to sanction the pension/gratuity/commutation of pension after proper scrutiny of the cases forwarded by the concerned Public Sector Undertaking and issue pension payment order to the Pension Disbursing Authority strictly as per para 6 of the scheme notified on 29.10.1999 with interest @ 9% per annum, within a period of 12 weeks from today. Pending application(s), if any, also stand disposed. No costs.

21. This decision of the High Court was challenged by the State Government before this Court in *Rajesh Chander Sood* (supra). This Court first posed the question as to whether a vested right came to be created in the employees of the corporate bodies when they came to be governed by the 1999 Scheme. On due consideration, this Court expressed the view that such employees who had exercised their option to be governed by the 1999 Scheme came to be regulated by the said scheme immediately on their having submitted their option.

In addition, all those employees who did not exercise any option were automatically deemed to have opted for the 1999 Scheme. As soon as the concerned employees came to be governed by the 1999 Scheme, a contingent right stood vested in them. On the question as to whether such a contingent right was binding and irrevocable, this Court held that the same was not binding on the State Government. Before dealing with the said issue, this Court examined the question as to whether the State Government was justified in postulating a cut-off date by which some of the employees governed by the 1999 Scheme (those who had retired prior to 02.12.2004 were entitled to draw pension under the 1999 Scheme whereas those who had not retired by the time the repeal notification was issued on 02.12.2004 were denied such benefit), the above question was answered by this Court in the following manner:

> **75.** Having given our thoughtful consideration to the issue canvassed, and having gone through the judgments cited, we are of the considered view that this Court has repeatedly upheld a cut-off date, for extending better and higher pensionary benefits, based on the financial health of the employer. A cut-off date can, therefore, legitimately be prescribed for extending pensionary benefits, if the funds available cannot assuage the liability, to all the existing pensioners. We are, therefore, satisfied to conclude that it is well within the authority of the State Government, in exercise of its administrative powers (which it exercised, by issuing the impugned Repeal Notification dated 02-12-2004) to fix a cut-off date, for continuing the right to receive pension in some, and depriving some others of the same. This right was unquestionably exercised by the State Government, as determined by this Court, in *R.R. Verma case* [*R.R. Verma* v. *Union of India*, (1980) 3 SCC 402: 1980 SCC (L&S) 423] , wherein this Court held that the Government was vested with the inherent power to review. And that the Government was free to alter its earlier administrative decisions and policy. Surely, this is what the State Government has done in the present controversy. But this Court in the abovementioned judgment, placed a rider on the exercise of such power by the Government. In that, the exercise of such power

should be in consonance with all legal and statutory obligations.

21.1. A contention was raised on behalf of the employees that by application of the principle of estoppel/ promissory estoppel, the State should not have gone back on the 1999 Scheme by issuing the repeal notification dated 02.12.2004. This Court repelled the above contention as under:

> **79.** We are of the considered view that the principle of estoppel/promissory estoppel cannot be invoked at the hands of the respondent employees, in the facts and circumstances of this case. It is not as if the rights which had accrued to the respondent employees under the Employees› Provident Fund Scheme, 1995 (under which the respondent employees were governed, prior to their being governed by the 1999 Scheme) have in any manner been altered to their disadvantage. All that was taken away, and given up by the respondent employees by way of foregoing the employer›s contribution up to 31-3-1999 (including the accrued interest thereon), by way of transfer to the corpus fund, was restored to the respondent employees. All the respondent employees, who have been deprived of their pensionary claims by the Repeal Notification dated 02-12-2004, would be entitled to all the rights which had accrued to them, under the Employees› Provident Fund Scheme, 1995. It is, therefore, not possible for us to accept that the respondent employees can be stated to have been made to irretrievably alter their position, to their detriment. Furthermore, all the corporate bodies (with which the respondent employees, are engaged) are independent juristic entities, as held in *State of Assam* v. *Barak Upatyaka D.U. Karmachari Sanstha* [*State of Assam* v. *Barak Upatyaka D.U. Karmachari Sanstha*, (2009) 5 SCC 694 : (2009) 2 SCC (L&S) 109] . The mere fact that the corporate bodies under reference, are fully controlled by the

> State Government, and the State Government is the ultimate authority to determine their conditions of service, under their articles of association, is inconsequential. Undoubtedly, the respondent employees are not government employees. The State Government, as a welfare measure, had ventured to honestly extend some post-retiral benefits to employees of such independent legal entities, on the mistaken belief, arising out of a miscalculation, that the same can be catered to, out of available resources. This measure was adopted by the State Government, not in its capacity as the employer of the respondent employees, but as a welfare measure. When it became apparent that the welfare measure extended by the State Government, could not be sustained as originally understood, the same was sought to be withdrawn.

21.2. Therefore, this Court held that it was not possible in law to apply the principle of estoppel/ promissory estoppel to the facts of the present controversy.

21.3. As regards the financial viability of the 1999 Scheme, this Court held thus:

> **84.** Moving to the next contention. A serious dispute has been raised before us, in respect of the financial viability of the 1999 Scheme. Insofar as the appellant State is concerned, it was asserted on its behalf, that a High-Level Committee was constituted by the Finance Department of the State Government on 21-1-2003. The said committee comprised of Managing Directors of the public sector undertakings and corporations concerned. The task of the High-Level Committee was to examine the financial viability of the 1999 Scheme. The said committee submitted a report dated 28-10-2003, returning a finding that the 1999 Scheme was not financially viable, and would not be self-sustaining. It is, therefore, that a tentative decision was taken by the State Government, to withdraw the 1999 Scheme.

85. To determine the modalities for withdrawing the 1999 Scheme, on the basis of the above report, the matter was jointly examined by the Finance Department and the Law Department of the State Government, wherein, in consonance with the advice tendered by the Law Department it was decided that the 1999 Scheme should not be withdrawn retrospectively. Based on the advice of the Law Department, it was finally decided that those who had commenced to draw pensionary benefits under the 1999 Scheme, would not be deprived of the same. And that, the 1999 Scheme should be withdrawn prospectively, for those whose right to receive pensionary benefits had not arisen, as they had not yet retired from service. In the above view of the matter, it was contended on behalf of the State Government that the action of the State Government in issuing the Repeal Notification dated 2-12-2004, was certainly not an arbitrary exercise of the power of administrative review. It was submitted that the same was based on two factors. Firstly, the financial unviability of the scheme. And secondly, those who had already commenced to draw pensionary benefits under the 1999 Scheme, were not to be affected. It was, therefore, pointed out that the classification made by the State Government was reasonable and justifiable in law, and it also had a nexus to the object sought to be achieved.

86. It is in the above scenario that the legality and justiciability of the 1999 Scheme, will have to be examined. The submission advanced at the behest of the respondent employees was that it was not permissible for the State Government to advance any such plea, because the State Government must be deemed to have examined the financial viability of the Scheme, before the 1999 Scheme was given effect to. And that, it does not lie in the mouth of the State Government, after giving effect to the 1999 Scheme, to assert that the 1999 Scheme was not financially

viable. It was insisted that even if data pertaining to the financial viability of the Scheme, as was sought to be relied upon was correct, financial deficiencies, if any, could be catered to by the State Government, from the vast financial resources available to it. And further, that the 1999 Scheme in terms of the determination rendered by the High Court, even if permitted to be repealed, should not impact the rights of the respondent employees, towards pensionary benefits.

87. We have given our thoughtful consideration to the above contention. It is not possible for us to accept the instant contention, advanced on behalf of the respondent employees. The calculations projected at the behest of the State Government, to demonstrate the financial unviability of the Scheme, have not been disputed. The same have been detailed in paras 10 and 11 above. The basis thereof, projected by the High-Level Committee, admittedly constitutes the rationale for issuing the Repeal Notification dated 02-12-2004. We are of the view that the consideration at the hands of the State Government was conscious and pointed, and was supported by facts and figures. It is apparent that out of 17 corporations/boards who were invited to express their views on the issue, only 7 had actually done so. It is not the case of the respondent employees that any one of those who had expressed their views, contested the fact that the pension scheme was not self-financing. Those who expressed their views affirmed that the pension scheme could be salvaged only with government support. Those who did not express their views, obviously had no comments to offer. The position projected by the State Government, therefore, cannot be considered to have been effectively rebutted. Certain facts and figures, have indeed been projected, on behalf of the respondent employees. These have been recorded by us in paras 60 and 61. Financial calculations cannot be made casually, on a

> generalised basis. In the absence of any authenticity, and that too with reference to all the 20 corporate entities specified in Schedule I of the 1999 Scheme, the projections made on behalf of the respondent employees, cannot be accepted, as constituting a legitimate basis, for a favourable legal determination. Since the respondent employees have not been able to demonstrate that the foundational basis for withdrawing the 1999 Scheme, was not premised on any arbitrary consideration, or alternatively, was not founded on any irrelevant consideration, it is not possible for us to accept the contention that the withdrawal of the 1999 Scheme, was not based on due consideration, or that, it was irrational or arbitrary or unreasonable. We are also satisfied that the action of the State Government, in allowing those who had already started earning pensionary benefits under the 1999 Scheme, was based on a legitimate classification, acceptable in law. In the above view of the matter, the action of the State Government cannot be described as arbitrary, and as such, violative of Article 14 of the Constitution of India. We are also satisfied in concluding that the understanding of the State Government (which had resulted in introducing the 1999 Scheme) on being found to be based on an incorrect calculation, with reference to the viability of the corpus fund (to operate the 1999 Scheme), had to be administratively reviewed. And that the State Government›s determination in exercising its power of review, was well founded.

21.4. Having held so, this Court accepted the contention canvassed on behalf of the State that budgetary allocations are a matter of policy decision and that the High Court should not have transferred the financial liability of the Corporation to run the 1999 Scheme to the State Government. This Court held as follows:

> **88.** It is also not possible for us to accept that any court has the jurisdiction to fasten a monetary liability on the State Government, as is the natural

> consequence, of the impugned order passed by the High Court, unless it emerges from the rights and liabilities canvassed in the lis itself. Budgetary allocations, are a matter of policy decisions. The State Government while promoting the 1999 Scheme, felt that the same would be self-financing. The State Government never intended to allocate financial resources out of State funds, to run the pension scheme. The State Government, in the instant view of the matter, could not have been burdened with the liability, which it never contemplated, in the first place. Moreover, it is the case of the respondent employees themselves, that a similar pension scheme, floated for civil servants in the State of Himachal Pradesh, has also been withdrawn. The State Government has demonstrated its incapacity, to provide the required financial resources. We are, therefore, of the view that the High Court should not (as it could not) have transferred the financial liability to run the 1999 Scheme, to the State Government. Similar suggestions made by the corporate bodies concerned, cannot constitute a basis for fastening the residuary liability on the Government.

21.5. This Court rejected the contention of the employees that they should be treated similarly like government employees. Claim for parity with government employees was held to be wholly misconceived. Thereafter, this Court held that the State Government had the competence to repeal the 1999 Scheme. By doing so, the State Government had not curtailed the right of the employees to receive pension; they would continue to receive pension under the erstwhile pension scheme but would not get the additional benefits under the 1999 Scheme.

22. Though learned senior counsel for the petitioners had argued that the judgment in *Rajesh Chander Sood* (supra) is *per incuriam,* we are unable to hold so. This Court had given elaborate reasons while allowing the civil appeal of the State thereby reversing the judgment of the High Court, including upholding the cut-off date of 02.12.2004. Merely because according to the petitioners the reasons given in

the judgment while accepting the stand of the State may not be in sync with previous decisions, it cannot be said to be a judgment rendered *per incuriam.* The concept of *per incuriam* is too well settled to warrant a detailed analysis here. The judgment rendered in *Rajesh Chandra Sood* (supra) by no stretch can be said to have ignored any binding precedent. Hence, the same cannot be said to be a judgment rendered *per incuriam.*

23. From the above, it is evident that the contentions that are being raised now were all advanced before this Court in *Rajesh Chander Sood* (supra) and those were all adjudicated. It is not open for the petitioners to once again seek the same reliefs as was sought in the earlier round of litigation which were negatived by this Court. High Court had allowed the claim of the employees (petitioners of the previous round and similarly situated employees like the present petitioners). When this Court had set aside the judgment of the High Court, it is evident that the claim of not only those petitioners but similarly situated employees (like the present petitioners) were also negatived. Therefore, there cannot be any challenge either directly or collaterally to the decision of this Court in *Rajesh Chander Sood* (supra) in a proceeding under Article 32 of the Constitution of India.

24. In *Naresh Shridhar Mirajkar Vs. State of Maharashtra,*[6] a nine-Judge Bench of this Court considered the question as to whether a judicial order passed by the High Court prohibiting publication in newspapers of evidence given by witnesses pending the hearing of the suit was amenable to be corrected by a writ of certiorari under Article 32(2) of the Constitution of India. Other issues were also gone into by this Court but that may not be relevant for the purpose of the present discourse. After deliberating on the facts and law, this Court opined that validity or propriety of such an order passed by the High Court could not be raised in writ proceedings taken out for the issuance of a writ of certiorari under Article 32. This Court declared that it was impossible to accept the argument of the petitioners that judicial orders passed by the High Courts in or in relation to proceedings pending before them are amenable to be corrected by this Court under Article 32 of the Constitution of India.

6 AIR 1967 SC 1

25. This Court in *Sub-Inspector Sadhan Kumar Goswami Vs. Union of India,*[7] considered a writ petition filed under Article 32 of the Constitution of India seeking to reopen a judgment of this Court rendered under Article 136 of the Constitution of India. After an analysis of the facts, this Court declared that merely because the petitioners were not parties to the previous decision, they could not file a writ petition under Article 32 of the Constitution of India. In fact, this Court took serious exception to the filing of such writ petitions.

26. *Rupa Ashok Hurra Vs. Ashok Hurra*[8] was a case where a Constitution Bench of this Court considered the question as to whether a writ petition under Article 32 of the Constitution of India can be maintained to question the validity of a judgment of this Court after the petition for review of the said judgment was dismissed. While deliberating upon the said question, this Court referred to its previous decision in *A.R. Antulay Vs. R.S. Nayak*[9] where a seven-Judge Bench of this Court held that an order of this Court was not amenable to correction by issuance of a writ of certiorari under Article 32 of the Constitution of India. *Rupa Ashok Hurra* (supra), of course, went on to hold that to prevent abuse of its process and to cure gross miscarriage of justice, this Court may reconsider its judgment(s) in exercise of its inherent power. For that, this Court provided for a curative jurisdiction post-dismissal of review petition by filing curative petition. In the present proceedings, we are not required to delve into the contours of curative jurisdiction.

27. This Court in *Omprakash Verma Vs. State of Andhra Pradesh*[10] reiterated the well-settled principle that a judgment of the Supreme Court cannot be collaterally challenged on the ground that certain points had not been considered.

28. Again, in the case of *Indian Council for Enviro-Legal Action Vs. Union of India,*[11] this Court held that a writ petition filed under Article 32 of the Constitution of India assailing the correctness of a decision of the Supreme Court on merits or seeking reconsideration is not

7 (1997) 2 SCC 225

8 (2002) 4 SCC 388

9 (1988) 2 SCC 602

10 (2010) 13 SCC 158

11 (2011) 8 SCC 161

maintainable. Referring to its earlier decision in *Khoday Distilleries Ltd. Vs. Registrar General, Supreme Court of India,* [12] the Court held that reconsideration of the final decision of the Supreme Court after review petition is dismissed by way of a writ petition under Article 32 of the Constitution of India cannot be sustained. Judgment and order of this Court passed under Article 136 of the Constitution of India is not amenable to judicial review under Article 32 of the Constitution.

29. Thus, law is well settled that a decision rendered by this Court, be it at the stage of special leave petition or post grant of leave while exercising jurisdiction under Article 136 of the Constitution of India, cannot be assailed directly or collaterally under Article 32. Remedy of an aggrieved litigant is to file for review. If the grievance persists even thereafter, he may invoke the curative jurisdiction subject to compliance of the requirements of such jurisdiction. But certainly it is not open for him to file a writ petition under Article 32 of the Constitution of India seeking the same relief.

30. Therefore, it is crystal clear that the present writ petition is thoroughly misconceived and is liable to be dismissed. However, before parting with the record, we would like to emphasize and reiterate the principle of finality of an adjudication process. Finality of a *lis* is a core facet of a sound judicial system. Litigation which had concluded or had reached finality cannot be reopened. A litigant who is aggrieved by a decision rendered by this Court in a special leave petition or in a civil appeal arising therefrom can seek its review by invoking the review jurisdiction and thereafter through a curative petition. But such a decision cannot be assailed in a writ proceeding under Article 32 of the Constitution of India. If this is permitted, then there will be no finality and no end to litigation. There will be chaos in the administration of justice.

31. In *Green View Tea & Industries Vs. Collector,* [13] this Court expressed the view that finality of an order of the Supreme Court should not lightly be unsettled. This salutary principle was reiterated by this Court in *Indian Council for Enviro-Legal Action Vs. Union of India.* [14]

---

12 (1996) 3 SCC 114

13 (2002) 1 SCC 109

14 (2011) 8 SCC 161

32. Thus, having regard to the discussions made above, we are of the unhesitant view that the present writ petition filed under Article 32 of the Constitution of India is wholly misconceived. The decision of this Court in *Rajesh Chander Sood* (supra) is clearly binding on the petitioners. That being the position, there is no merit in the writ petition which is accordingly dismissed.

33. Considering the fact that petitioners are retired employees and senior citizens, we refrain from imposing any cost.

Result of the case: Writ Petition dismissed.

†*Headnotes prepared by:* Divya Pandey