REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 712-713 OF 2015
(Arising out of SLP(C) Nos.3106-3107 of 2012)

T.M. Sampath & Ors. … Appellants

:VERSUS:

Secretary, Ministry of Water Resources & Ors. … Respondents

WITH

CIVIL APPEAL NOS. 714-715 OF 2015
(Arising out of SLP(C) Nos.20425-20426 of 2011)

S.C. Awasthi & Ors. … Appellants

:Versus:

Union of India & Ors. … Respondents

AND

CIVIL APPEAL NO. 716 OF 2015
(Arising out of SLP(C) No.19102 of 2012)

P.N. Mishra … Appellants

:Versus:

Union of India & Ors. … Respondents

AND

WRIT PETITION (CIVIL) NO. 556 OF 2012

All India Navodaya Vidyalaya
Staff Association and Ors. ….Petitioners

:Versus:

Union of India & Ors. … Respondents

AND

WRIT PETITION (CIVIL) NO. 518 OF 2012

S. Kannan and Ors. ....Petitioners

:Versus:

Union of India & Ors. ... Respondents

J U D G M E N T

Pinaki Chandra Ghose, J.

1. Leave granted in all the SLPs.

CIVIL APPEALS @ SLP(C) NOS.3106-3107 of 2012 AND SLP(C) NOS.20425-20426 of 2011)

2. These appeals, by special leave, have been filed against the judgment and order dated 06.01.2011 passed by the High Court of Delhi at New Delhi in Writ Petition (Civil) No.3197 of 2010 and order dated 18.03.2011 in Review Petition No.90/2011, by which the High Court set aside the Order dated 08.02.2010 passed by Central Administrative Tribunal in Original Application No.2037 of 2008 filed by the appellants herein.

3. The facts of these appeals are briefly stated hereinafter. Appellants herein are the employees of National Water Development

Agency ("NWDA") which was established as a Society in July 1982 and was registered under the Societies Registration Act, 1860. The Society NWDA, which falls under the aegis and control, both administrative and financial, of the Ministry of Water Resources, is fully funded by the Government of India, headed by the Union Minister for Water Resources as the President. The NWDA framed Rules and Regulations for its smooth functioning. Whatever emoluments have been prescribed for the Government servants by the Central Government Office Memorandum ("O.M.", for short) the same apply mutatis mutandis to the employees of NWDA. By-law 28 of the NWDA also mandates that the rules and orders applicable to the Central Government employees shall apply mutatis mutandis to the employees of the NWDA subject to modification by the Governing Body concerning service conditions and only in case of any doubt, the matter has to be referred to the Governing Body for a decision. Bye-law 26(a) provides for the emoluments structure for all employees that will be adopted by NWDA, with the approval of Ministry of Finance (Department of Expenditure). Bye-law 28 provides that till such time the NWDA frames its rules governing service conditions of the employees, rules and orders applicable to Central Government Employees shall apply *mutatis mutandis*, subject to such modifications as made by NWDA from time to time.

4. As per the appellants, NWDA had implemented all the recommendations of the Fourth Central Pay Commission from

22.10.1986. The pay scales of the employees of NWDA were revised as made applicable to Central Government employees. Pursuant to the recommendation of the Fourth Central Pay Commission, Office Memorandum dated 01-05-1987 was issued by the Ministry of Personnel, Public Grievance and Pension, Department of Pensions and Pensioners' Welfare, for switch-over of employees from Contributory Provident Scheme to Pension Scheme, according to which all Contributory Provident Fund (CPF) Scheme beneficiaries, who were in service of the Central Government on 1.1.1986, were deemed to have come over to the Pension Scheme unless they specifically opted out to continue under CPF Scheme. This Pension Scheme was formulated by the Government under the 1972 Pension Rules. The Office Memorandum dated 01-05-1987 reads as under:

> "Change-over of employees from Contributory Provident fund Scheme to Pension Scheme
> (G.I., Dept. of Pensions & Pensioners Welfare, O.M. No.4/1/87-P.I.C.I., dated the 1st May, 1987.)
>
> The Central Government employees who are governed by the Contributory Provident Fund Scheme (CPF Scheme) have been given repeated options in the past to come over to the pension scheme. The last such option was given in the Department of Personnel and Training O.M. No. F.3 (1)-Pension Unit/85, dated 6th June, 1985. However, some Central Government employees still continue under the CPF Scheme. The Fourth Central pay Commission has recommended that all CPF beneficiaries in service on January, 1, 1986, should be deemed to have come over to the Pension Scheme on that date unless they specifically opt out to continue under the CPF Scheme.

2. After careful consideration, it has been decided that the said recommendation shall be accepted and implemented in the manner hereinafter indicated.

3.1 All CPF beneficiaries, who were in service on 1st January, 1986, and who are still in service on the date of issue of these orders (viz, 1st May, 1987) will be deemed to have come over to the pension Scheme.

3.2 The employees of the category mentioned above will, however, have as option to continue under the CPF Scheme, if they so desire. The option will have to be exercised and conveyed to the Head of Office by 30.09.1987, in the form enclosed if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to the Pension Scheme.

3.3 The CPF beneficiaries, who were in service on 1st January, 1986, but have since retired and in whose case retirement benefits have also been paid under the CPF Scheme, will have an option to have their retirement benefits calculated under the Pension Scheme provided they refund to the government, the Government contribution to the Contributory Provident Fund and the interest thereon, drawn by them at the time of settlement of the CPF Account. Such option shall be exercised latest by 30.9.1987.

3.4 In the case of CPF beneficiaries, who were in service on 1.1.1986, but have been since retired, and in whose case the CPF Account has not already been paid, will be allowed retirement benefits as if they were borne on pensionable establishments unless benefits settled under the CPF Scheme.

3.5 In the case of CPF beneficiaries, who were in service on 1.1.1986, but have since died either before retirement or after retirement, the case will be settled in accordance with para 3.3 or 3.4 above, as the case may be. Options in such cases will be exercised latest by 30.9.1987, by the widow/widower and in the absence of widow/widower by the eldest surviving member of the family who would have otherwise been eligible to family pension under the Family Pension Scheme if such scheme were applicable.

3.6 The option once exercised shall be final.

3.7 In the types of cases covered by paragraphs 3.3 and 3.5 involving refund of Government's contribution to the contributory provident fund together with interest drawn at the time of retirement, the amount will have to be refunded latest by the 30th September, 1987. If the amount is not refunded by the said date, simple interest thereon will be payable at 10% per annum for period of delay beyond 30.9.1987.

4.1 In the case of employees who are deemed to come over or who opt to come over to the Pension Scheme in terms of paragraphs 3.3, 3.4 and 3.5, the retirement and death benefits will be regulated in the same manner as in case of temporary/ quasi-permanent or permanent Government servants, as the case may be, borne on pensionable establishment.

4.2 In the case of employees referred to above, who come over or are deemed to come over to the Pension Scheme, the government's contribution to the CPF Account of the employees will be resumed by the government. The employee's contribution together with the interest thereon at his credit in the CPF Account will be transferred to the CPF Account to be allotted to him on his coming over to the Pension Scheme.

4.3 Action to discontinue subscriptions/ contributions to CPF Account may be taken only after the last date specified for exercise of option, viz. 30.9.1987.

5. A proposal to grant ex gratia payment to the CPF beneficiaries, who retired prior to 1.1.1986, and to the families of CPF beneficiaries who died prior to 1.1.1986, on the basis of the recommendations of the Fourth Central Pay Commission is separately under consideration of the Government. The said ex gratia payment, if and when sanctioned, will not be admissible to the employees or their families who opt to continue under the CPF Scheme from 1.1.1986 onward. (See Order (4) in this Appendix)

6.1 These orders apply to all Civilian Central Government employees who are subscribing to the Contributory Provident Fund under the Contributory Provident Fund Rules (India) 1962. In the case of other contributory

provident funds, such as Special Railway Provident Fund or Indian Ordinance Factory Workers Provident Fund or Indian Naval Dockyard Workers Provident Fund, etc. necessary orders will be issued by the respective administrative authorities.

6.2 These orders do not apply to Central Government employees who, on re-employment are allowed to subscribe to Contributory Provident Fund. These orders also do not apply to Central Government employees appointed on contract basis where the contribution to the Contributory Provident Fund is regulated in accordance with the terms of contract.

6.3 These orders do not also apply to scientific and technical personnel of the Department of Atomic Energy, Department of Space, Department of Electronics and such other Scientific Department as have adopted the system prevailing in the Department of Atomic Energy. Separate orders will be issued in their respect in due course (See Order (3) in this Appendix)

7.1 Ministry of Agriculture, etc. are requested to bring these orders to the notice of CPF beneficiaries under them, including those who have retired since 1.1.1986, and to the families covered by paragraph 3.5 of these orders.

7.2 Administrative Ministries administering any of the Contributory Provident Fund Rules, other than Contributory Provident Fund Rules (India) 1962, are also advised to issue similar orders in respect of CPF beneficiaries covered by those rules in consultation with the Department of Pension and Pensioners' Welfare.

8. These orders issue with the concurrence of the Ministry of Finance, Department of Expenditure, vide their U.O. No.2038/IS (Pres)/97, dated 13.4.1987."

The above switch-over was applicable to all the Central Government employees who were subscribing to the Contributory Provident Fund under the Contributory Provident Fund Rules, 1962. As stated in

paragraph 7.2 of the said O.M., this switch-over was not applicable *ipso facto* to autonomous bodies under the Ministries of Central Government who were subscribing to any other scheme other than CPF Rules 1962, and therefore, it directed the administrative bodies to issue similar orders for CPF beneficiaries, in consultation with Department of Pensions and Pensioners' Welfare. Subsequently the employees of NWDA made representations to NWDA and Ministry of Water Resources in view of the directions in the O.M., pursuant to which the Ministry of Water Resources sought advice from the Ministry of Finance (Department of Expenditure). The Finance Ministry vide its letter dated 16.03.2000, advised autonomous bodies to continue to follow the CPF Scheme or work out an annuity scheme. Under paragraph 3 of the said letter it stated that introduction of pension scheme on Government of India pattern should not be agreed as a rule, and any exception in this regard would be referred to the Department. The Governing Body of NWDA in its 3rd meeting held on 31.3.1983 approved introduction of Contributory Provident Fund scheme for the employees of NWDA on the lines of Contributory Provident Fund Rules (India), 1962, as was clear in the appointment orders and CPF settlement cases of deceased employees of NWDA issued belatedly on 19/09/2007 and 23/12/2009. The NWDA did not make any distinct CPF rules. As stated by the respondents, in the year 1982 NWDA had framed contributory Provident Fund Rules, which were duly approved by the Governing Body of NWDA. It

rejected the proposal for introduction of Pension-cum- GPF-DCRG Scheme in NWDA. The appellants sought Right to Information ("RTI") on 18.7.2000 whereupon the decision of Ministry of Finance dated 16.3.2000 and the decision taken by the Governing Body on 30.3.2000 that the implementation of the O.M. was rejected by the Governing body, was appraised to them.

5. The appellants filed O.A. No.2037 of 2008 before the Central Administrative Tribunal assailing the decision of the Governing Body dated 30.03.2000 rejecting their request to switch-over to the Pension Scheme and letter dated 16.3.2000 issued by the Finance Ministry whereby the request of the appellants to switch-over to the Pension Scheme pursuant to the O.M. dated 1.5.1987, had been turned down.

6. Before the Central Administrative Tribunal (hereinafter referred to as "the Tribunal"), when the case came up for hearing, the respondents took a preliminary objection as to the cause of action being barred by limitation on the ground that though the O.M. is dated 01.05.1987, yet few members were associated in the 30th meeting of the Governing Body having knowledge of the resolution passed by the respondents on 30.03.2000 and that they cannot

resort to a cause of action on the basis of RTI after 8 years, to file the above OA. The Tribunal overruled the objection raised by the respondents and after referring to various authorities, observed that fundamental right of grant of pension does not attract limitation. Moreover, on inaction the Government is precluded from raising the hyper technical plea to defeat the rightful claim of applicants. The order passed in 2000 was reiterated to the applicants in 2007 thus the case of the applicants was good on merits. The Tribunal after referring to the O.M., the bye-laws 26(a) & 28 and the decision of this Court in *Union of India v. S.L.Verma*, (2006) 14 SCALE 56, held that there was nothing in the language of clause 6.1 of the O.M. dated 01.05.1987, to suggest that the said O.M. does not apply to the employees of autonomous bodies controlled by Central Government and the said view finds no support from clause 7.2 of the O.M. The advice dated 16.03.2000 of the Ministry of Finance to the Ministry of Water Resources, at best, can be treated as an executive order and as the same does not have retrospective effect, it has no application to overrule the O.M. The Tribunal further held that the NWDA/Ministry of Water Resources committed an error in seeking advice from Ministry of Finance regarding implementation of the O.M. for the reason that bye-law 26(a) provides that no approval of Central Government is required to adopt scales of pay or allowances identical to those adopted for corresponding posts as per order issued by Central Government. As per bye-law 28, since no rules were framed

by NWDA regarding switch-over of its employees, the O.M. squarely applied to NWDA employees and the question of applicability of the O.M. to the employees of the autonomous bodies is no longer res integra by the decision of the Supreme Court in *Union of India v. S.L.Verma* (supra). Accordingly, the Tribunal vide its order dated 08.02.2010, set aside the orders dated 16.03.2000 and 30.03.2000 impugned before it, allowed the O.A. No.2037 of 2008 and directed the respondents to implement O.M. dated 01.05.1987 and treat the employees of NWDA as covered under Pension Scheme in terms of Central Civil Services (Pension) Rules, 1972 ("CCS Pension Rules", for short) w.e.f. 01.01.1986 with all benefits.

7. Aggrieved by the decision of the Tribunal, the respondents filed writ petition under Article 226 and 227 of Constitution of India, challenging the order 08.02.2010 passed by the Tribunal. The respondents did not urge the issue of limitation before the High Court. The question that arose for consideration before the High Court was as to the applicability of the O.M. dated 01.05.1987 to the employees of NWDA and whether reliance placed by the Tribunal upon the decision in *S.L. Verma's* case was correct. The High Court after referring to clauses 6.1 and 7.2 of the O.M., held that the employees of NWDA are not "Civilian Central Government employees" as NWDA is an autonomous body working under

administrative control of the Ministry of Water Resources; the employees of NWDA are governed by National Water Development Agency Contributory Fund Rules, 1982 and not Contributory Provident Fund (India) Rules 1962, and in that view of the matter, they are covered under third situation envisaged under clause 7.2 of the O.M. dated 01.05.1987 and not under the two situations under clause 6.1 and clause 7.2 thereof. The High Court was of the opinion that the Ministry of Water Resources ideally should have consulted the Department of Pensions and Pensioners' Welfare for issuance of similar orders as O.M. dated 01.05.1987. However, the Ministry of Water Resources consulted the Department of Expenditure, Ministry of Finance in respect of the said matter instead of consulting the Department of Pensions and Pensioner's Welfare. As regards the reason given by the Tribunal on by-law 28 of the NWDA is concerned, the High Court opined that a bare reading of the provision makes it clear that rules and orders applicable to the Central Government employees shall apply *mutatis mutandis* to the employees of NWDA only in cases where NWDA has not framed its own rules and regulations. NWDA had framed its own CPF Rules in 1982 and thus, by-law 28 has no role to play in the instant case. On careful comparison of facts of S.L. Verma case with the facts of the case at hand, the High Court observed that there are two material facts which entirely distinguish S.L. Verma case from the case at hand. First being that the O.M. dated 01.05.1987 was fully applicable to the

employees in the S.L. Verma case while this is disputed in the present case. The second fact being that the S.L. Verma case proceeds on the premise that the recommendation of Fourth Central Pay Commission pertaining to switching-over of the employees from Contributory Provident Scheme to Pension Scheme was accepted by the employer in that case. However, in the present case, it was specifically pleaded by the appellants that the said recommendations of Fourth Central Pay Commission were not accepted by the Governing Body of NWDA.

8. Learned counsel for the appellants claimed that O.M. dated 01.05.1987 was scrutinized by the Supreme Court in the case of *S.L. Verma* (supra) and the present case is fully covered by the ratio of said case. NWDA has not framed CPF Rules in 1982. There was no reason for not placing on record the CPF Rules 1982 as approved by the Governing Body before the Courts along with their pleadings. Only at final stage they were included. NWDA has not brought the said Rules to the knowledge of the appellants. The Rules have not been approved by the Governing body and are not in operation. The specific case of Respondent T.M. Sampath in review petition was that the Respondents had not framed any CPF Rules 1982. No copy of the said Rules was ever provided. As evident from the appointment letters, at least 100 appointments on record proved that the petitioners were governed by the CPF Rues of 1962. It was clearly

mentioned under item 6 that they would be compulsorily required to contribute to the CPF Rules 1962. These appointments were made after the decision taken by the Governing Body on 31.3.1983. If the NWDA Rules, 1982 were in operation, there was no reason for the respondent authority not to mention in the offer of appointments that the employees would be governed by NWDA Rules, 1982. All orders of Government of India in respect of 1962 Rules were adopted by NWDA from time to time. Under the bye-laws, the Governing Body is empowered to make and amend any rules of NWDA. But no separate CPF Rules, 1982 have ever been put up in prescribed format like those of medical attendance, earned leave and recruitment rules except introduction of CPF Scheme on lines of CPF Rules, 1962. Going by the above facts the employees should get all the benefits which Central Government Civilian Employees are entitled to. Under bye-law 28, only in case of doubt the matter is referred to Governing Body for a decision, there is no provision to switchover or application of Pension Rules as envisaged through O.M. Thus when there was no working Rules and Regulation as to conversion from CPF to Pension Scheme the order by the Pension Department passed on 01.05.1987 would be applicable. The petitioners are covered under clause 6.1 of O.M. read in conjunction with clause 7.2 and in view of bye-law 28 the O.M. will be applicable mutatis mutandis. NWDA had also not circulated the O.M. amongst the employees. Thus they never

submitted their option for switch over. Accordingly they are deemed to have opted by implication of not giving option.

9. The Respondent acted in *mala fide* in implementing the second O.M. for introduction of Death-cum-Retirement Gratuity Scheme which was meant for Civilian Central government employees who wanted to continue under CPF Rules 1962. It is submitted that six to seven employees who were in a position to implement all the order had been absorbed by taking pro-rata pension. The O.M. was equally applicable o Autonomous bodies. The Government had failed to show that it had refused to finance Autonomous bodies. It had acted arbitrarily by rejecting the claim of Petitioners. The petitioner's Fundamental Rights under Article 14 and 16 had been violated by not treating them at par with their similar counterparts in Central Government, when the NWDA falls within the meaning of "State" as defined in Article 12 of Constitution. The petitioners were in regular service of Respondents after confirmation and thus they are entitled to protection under Article 311 of Constitution. The Respondents have acted wrongly by the fact that NWDA implemented all recommendations of 4th Central Pay Commission except the changeover of CPF beneficiaries to Pension scheme, as all top officers who were responsible for implementing were on deputation and were already covered under the Pension Scheme.

10. The Respondents have not pursued the change-over of CPF to Pension Scheme in a proper way. NWDA had never informed either the Governing Body or Ministry of Finance that they are obligated to bring in effect the change-over. Their contention that they placed the issue on 30.3.2000 is per say illegal and arbitrary. The letter of Department of Expenditure of 16.03.2000 only provided advice that introduction to autonomous organization should not be made in routine way. The Governing Body of NWDA is bound by legal fictions for providing pension scheme. The legal fictions are created by reason of O.M. of 01.05.1987, acceptance of 4th CPC recommendations, bye-law 28 and sub rule (6)(iv) of Rule 209 of General Financial Rules that service conditions of autonomous organization receiving more than 50% of recurring expenditure by way of grant in aid from Central Government should be treated at par with their counterparts in Central Government. In view of the decision in *Sudhir vs. TISCO* (1984) UJ SC 986, any rule which places absolute discretion of an administrative authority the power to grant or refuse pension or gratuity is arbitrary and violative of Article 14. The petitioners are performing duties in the interest of State, and they should be provided conditions and benefits of service in view of the Court in Accountant General vs. Bakshi A (1962) SC 505. The

denial of retrial benefits is denial of livelihood after superannuation which is violative of Article 21.

11. The Respondents submitted that the same is wrong and that there are two material facts which entirely distinguish S.L. Verma's case from the present case. They dismissed the contention stating the same to be wrong and submitted that the organization had framed its own CPF Rules, 1982 which were duly approved by the NWDA Governing Body in its meeting held on 31.03.1983. The CPF rules were made effective retrospectively from 15.07.1982. The Respondents submitted that when the CPF Rules 1982 were framed on the lines of the 1962 Rules, then mere mentioning of the wrong year doesn't confer any constitutional right that the employees would be governed by CPF Rules 1962. It is also noteworthy that NWDA came into existence in 1982. Posts in different grades were filled either by direct recruitment or by deputation. For this reason, even after NWDA CPF Rules were formulated, orders were issued mentioning compulsory contribution to CPF under CPF Rules 1962. Rule 10(2) of NWDA CPF Rules, 1982 says that contribution shall be a percentage of the subscriber's contribution or may be prescribed by Government. Rule 11 provides that the agency will pay interest at such rate as the Central Government prescribes on subscriptions to CPF. It is submitted that all orders of Central Government were not

automatically made applicable to employees of NWDA. After acceptance of 4th pay recommendations the OM was issued extending benefits to employees governed by CPF Scheme. As NWDA was following its own CPF Rules, the benefits were extended by framing its own Rules in consultation with nodal ministry. These rules were approved by Governing Body in the 21st meeting. Since the rules and regulation governing service conditions had been framed by NWDA, bye-law 28 has no application.

12. As NWDA is a temporary organization all officer are also temporary employees. No employees have been declared as permanent. The service rendered in NWDA by its employees is non-pensionable. The establishment expenditure of NWDA and for implementing the mandate of NWDA, grant-in aid is provided by Government. Without any specific approval of Ministry of Finance, Department of Pension and Pensioner's Welfare and Ministry of Water Resources the NWDA cannot introduce the pension scheme on lines of CCS Pension Rules. The petitioners have misled the Court that the Government orders are adopted by the Respondent where rules are not framed. The petitioners are covered under clause 7.2 in view of the O.M., it was examined by Department of Pension and Pensioners Welfare and Ministry of Finance. Both after examining the proposal did not agree to the contention of the petitioners. The allegation, that

NWDA had intentionally not circulated the O.M. is wrong. The changeover to Pension Scheme was not automatic as NWDA was following its own CPF Rules, 1982. The rules and regulations in different autonomous bodies are different so the petitioners cannot be equated at par with their counterparts working in Government Departments and Autonomous Bodies as contended in Union of India vs. Dr. Jai Dev Wig and Ors.

13. Based on the provisions in O.M. proposal for framing of DCRG Rules for employees of NWDA was processed by the officers on deputation from pensionable departments with help from officers/employees. The officer and employees were fully involved and they cannot claim that they were totally ignorant of the orders. The changeover of employees cannot be suo-motto made applicable for NWDA employees. The petitioners have failed to prove arbitrary action of the respondents and hence *Sudhir vs. TISCO,* (1984) UJ SC 986, and *Accountant General vs. Bakshi,* AIR 1962 SC 505, has no application. In view of the law laid down in *Steel Authority of India Ltd. vs. Dibeyendu Bhattacharya* (2011) 2 SLR 243, petitioners have no cause of action.

14. In light of the facts and circumstances of this case and the submissions made by the learned counsel on both sides, it can be

concluded that NWDA had framed its regulation the CPF Rules, 1982 and they were duly approved by the Governing Body of NWDA. As NWDA is an autonomous body under the Ministry of Water Resources, it has framed it own bye-laws governing the employees. It has been time and again reiterated that the Court must adopt an attitude of total non-interference or minimal interference in the matter of interpretation of Rules framed by autonomous institutions. In *Chairman & MD, Kerala SRTC vs. K.O. Varghese and Others,* (2007) 8 SCC 231, this Court held:

> "KSRTC is an autonomous corporation established under the Road Transport Corporation Act, 1950. It can regulate the service of its employees by making appropriate regulations it that behalf. The High Court is not correct in thinking that there is any compulsion on KSRTC on the mere adoption of Part III of KSR to automatically give all enhancements in pension and other benefits given by the State Government to its employees."

Thus, as the appellants are governed by the CPF Rules1982, the O.M. applicable to Central Government employees is not applicable to them.

15. On the issue of parity between the employees of NWDA and Central Government employees, even if it is assumed that the 1982 Rules did not exist or were not applicable on the date of the O.M. i.e.

01.05.1987, the relevant date of parity, the principle of parity cannot be applicable to the employees of NWDA. NWDA cannot be treated as an instrumentality of the State under Article 12 of the Constitution merely on the basis that its funds are granted by the Central Government. In *Zee Telefilms Ltd. & Another v. Union of India & Ors.*, (2005) 4 SCC 649, it was held by this Court that the autonomous bodies having some nexus with the Government by itself would not bring them within the sweep of the expression 'State' and each case must be determined on its own merits. Thus, the plea of the employees of NWDA to be treated at par with their counterparts in Central Government under sub rule (6)(iv) of Rule 2009 of General Financial Rules, merely on the basis of funding is not applicable.

16. Even if it is presumed that NWDA is "State" under Article 12 of the Constitution, the appellants have failed to prove that they are at par with their counterparts, with whom they claim parity. As held by this Court in *Union Territory, Chandigarh v. Krishan Bhandari*, (1996) 11 SCC 348, the claim to equality can be claimed when there is discrimination by the State between two persons who are similarly situated. The said discrimination cannot be invoked in cases where discrimination sought to be shown is between acts of two different authorities functioning as State under Article 12. Thus, the employees

of NWDA cannot be said to be 'Central Government Employees' as stated in the O.M. for its applicability.

17. Thus, by reason that the employees are governed by NWDA CPF Rules, 1982, the O.M. dated 01.05.1987 is not applicable to the appellant-employees. Further, as they have not established that they are Central Government employees, at par with their counterparts, their claim of parity with Central Government Employees is also defeated.

18. In view of the discussion in the foregoing paragraphs, we do not find any merit in these appeals which are accordingly dismissed. There shall be no order as to costs.

WRIT PETITION (CIVIL) NOS. 556 & 518 OF 2012 AND CIVIL APPEAL @ SLP(C) No.19102/2012)

19. Writ Petition (Civil) Nos. 556/2012 and 518/2012 and Special Leave Petition (C) No.19102/2012 are other group of matters arising out of same factual matrix and the point of contention in all three matters is same. Writ Petition (Civil) No.556/2012 has been filed by All India Navodaya Vidyalaya Staff Association and Writ Petition (Civil) No.518/2012 has been filed by the Principals and other officials of

Jawahar Navodaya Vidyalaya and the employees of the Navodaya Vidyalaya Samiti, for issuance of an appropriate writ in the nature of mandamus or any other direction/s to the respondents to introduce and implement CCS Pension Scheme, 1972 to all the employees of the Navodaya Vidyalaya Samiti. SLP(C) No.19102/2012 has been filed by Shri P.N. Mishra against the order dated 09.12.2012 passed by the High Court of Jharkhand at Ranchi dismissing the writ petition filed by him.

20. The facts necessary for disposal of these cases, stated briefly, are that the idea of Jawahar Navodaya Vidyalaya was conceptualized in 1985 and two model schools were started, one each at Jajjhar in Haryana and Amravati in Maharashtra. However, the Jawahar Navodaya Vidayala Samiti was established under the Registration of Societies Act, 1960 on 28-02-1986. It is stated that Jawahar Navodaya Vidyalaya schools have been established under the aegis of the Ministry of Human Resource Development, Government of India. The employees of Jawahar Navodaya Vidyalaya Samiti ("JNVS") demanded that they be brought under the GPF-cum-Pension Scheme like their counterparts in other educational institutions, like Kendriya Vidyalaya Samity ("KVS"), IITs, Sainik Schools, NCERT etc. However, they have continued to be governed only by CPF Scheme and were excluded from the Pension Scheme till 2004. It has been submitted

on behalf of the Petitioners/appellants that the Executive Committee of JNVS had adopted a resolution which proposed the application of Central Government Service Rules to its employees mutatis mutandis till the Samiti framed its own rules. But the resolution has not been shown to have been approved by the Government or District Inspector of Schools. In any case, the demands of the employees of JNVS have been supported as well as voiced by various Government functionaries including Ministry of Human Resource and Development through its letter to the Finance Ministry in 1998 seeking approval of the Finance Ministry to introduce the Pension Scheme to JNVS, Y.N. Chaturvedi Committee Report on Review of Management Structure and Operating Mechanism of Navodaya Vidayala Samiti, Parliamentary Committee on Functioning of Navodaya Vidayala Samiti through its 154th, 184th and 198th Reports. All these committees have strongly recommended that the employees of JNVS be brought at par with the employees of Kendriya Vidayalaya and be given similar service benefits, including pension under 1972 Rules. However, the major hurdle in implementation of Pension Scheme to the employees of JNVS has been the financial constraints as the Finance Ministry never gave a go-ahead for such implementation. To substantiate their claim, JNVS engaged an actuary to determine the financial feasibility of implementing the Pension Scheme to JNVS employees and it was found that if the employees contribution upto 31.03.2005 is transferred to the Pension Fund by 31.03.2005 and

annual contribution of @18% of salary on monthly basis from 01.04.2006, the implementation of the scheme is financially viable.

21. The Central Government formulated New Pension Scheme, 2004 for the employees of the JNVS in response to their repeated demands. This New Pension Scheme was implemented from 01.01.2009. All the employees who had joined prior to the date of implementation were given an option to either continue under the CPF Scheme or to switch over to the New Pension Scheme. The cut-off date for this New Pension Scheme was 01.01.2004; therefore, it was not available to the employees who had joined the service prior to cut-off date. However, the employees claim that New Pension Scheme was also discriminatory as it is not at par with the Pension Scheme under 1972 Rules. The existing employees were put under Tier-II of the New Pension Scheme and the employer's contribution was not available to them. Further, the New Pension Scheme did not include any family pension, medical benefits and death gratuity.

22. Present Appellant in SLP No.19102/2012, Shri P.N. Mishra had filed a Writ petition in the Jharkhand High Court seeking writ of mandamus against the Government to implement the Pension Scheme under 1972 Rules for the employees of the Jawahar Navodaya Vidyalaya on the grounds of arbitrary discrimination

against them vis-à-vis employees of the Kendriya Vidyalaya and other educational institution although run by autonomous bodies but very much under the aegis of the HRD ministry whose employees are benefitted by the Pension Scheme. The Petitioner therein also challenged the New Pension Scheme notified in 2008 being discriminatory and ultra vires of Articles 14, 19 and 21 of the Constitution of India. The High Court found that there existed no pension scheme for the employees of JNVS till the 2004 Scheme which was notified in 2008. It noted that the New Pension Scheme which was formulated by the Government in 2004 and notified in 2008 was in response to the demands of the employees of JNVS and that cut-off date was the domain of the employer. It relied on the judgment in *All India Reserve Bank Retired Officers' Association v. Reserve Bank of India*, (1992) Suppl. (1) SCC 664, wherein the Supreme Court had held that when an existing scheme is liberalized, the employer cannot ordinarily grant the benefit to one class of employees and deny it to others by choosing arbitrary cut-off date. However, when a completely new scheme is introduced, whole new set of considerations are involved primarily being the financial implications. On these grounds the High Court dismissed the Writ petition stating that the Petitioner could not prove that NPS was arbitrary or discriminatory.

23. Following issues are involved in these matters for our consideration:

(i) Whether O.M. dated 1-05-1987 applies to the employees of the NVS?

(ii) Whether the financial implication can be valid consideration for denying pension?

(iii) Whether the employees of the Navodaya Vidyalaya are entitled to parity in pension with the employees of other autonomous institutions like Kendriya Vidyalaya, NCERT, National Open Schools and Tibetan Schools Association?

(iv) Whether the New Pension Scheme, 2004 is arbitrary or discriminatory?

24. Learned counsel appearing for the petitioners/appellants have emphasized on the applicability of the Office Memorandum of the Department Public Grievances and Pensions Department of Pensions and Pensioners' Welfare dated 01-05-1987 to the employees of JNVS just like it was applied to the KVS. However, the learned Additional Solicitor General has lucidly brought out the difference between the position of employees of the organization with respect to said O.M. She has pointed out that for application of the said O.M., following three pre-requisites were to be fulfilled by the employees :

(i) They must be Central Government employees,

(ii) They must be in service on 01-01-1986, and

(iii) They must be CPF beneficiaries as on 01-01-1986.

25. The Respondents have contended that the JNVS was not in existence at the time of cut-off date applicable under the O.M. dated 01.05.1987 and also that the employees of the JNVS cannot claim as of a right to be governed by the Central Civil Service (Pension) Rules, 1972 as they are not employees of the Central Government.

26. It is undisputed fact that the Navodaya Vidyalaya Samiti was established and registered under the Societies Registration Act, 1860 only on 28-02-1986, so its employees cannot be in service as on 01-01-1986. Thus, while first condition is disputed, the second condition is clearly not fulfilled. In contrast, the KVS was established in 1965. Therefore, we find merit in the argument of the learned Additional Solicitor General that the said O.M. cannot apply to the NVS employees.

27. Further, it was submitted by the learned counsel for the petitioners/appellants that the only reason for not providing pension as per 1972 Rules has been the financial implications which becomes apparent from the letter of the Finance Ministry dated 05-02-1999 to the HRD Ministry in which the Finance Minister has clearly pointed out

the excessive liability that the Government would have to incur in case it extends pension scheme to the JNVS employees and suggested that an annuity scheme may be formulated with LIC by employees contribution alone without any liability of the Government. Also the Finance Ministry has expressed its concern that extending such pension benefit on the grounds of parity would mean that all the autonomous bodies under Government of India would make similar demands and that would be financially infeasible.

28. In support of these submissions, learned counsel for the petitioners/appellants has cited plethora of judgments wherein it was held that fundamental rights cannot be violated on the grounds of financial constraints and that the right to education is a fundamental right which cannot be jeopardized by compromising with quality of teachers in schools due to poor post service benefits. Reliance was also placed on *Municipal Council, Ratlam v. Vardichand* (1980) 4 SCC 162, *All India Imam Organization v. Union of India*, (1993) 3 SCC 584, and *Kapila Hingorani v. State of Bihar*, (2003) 6 SCC 1.

29. Learned Additional Solicitor General appearing for the respondents argued that none of the cases relied upon by the Petitioners/appellants involves right to pension and that Pension is not a Fundamental Right. She cited *Associate Banks Officers'*

Association v. State Bank of India and Ors., 1998 (1) SCC 428, wherein this Court observed that many ingredients go into shaping of the wage structure of any organization, including the economic capability of the employer. Taking simplistic approach of granting higher remuneration to workers of one organization because another organization had granted its employees, may lead to undesirable results and the application of the doctrine would be fraught with danger and may seriously affect the efficiency and functioning of the organization. She also relied on *A.K. Bindal v. Union of India*, (2003) 5 SCC 163, which also states that the financial capacity is a relevant consideration in deciding revision of pay scales. Therefore, the learned Additional Solicitor General concluded that financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure and thus, the demands of the employees of NVS are not founded on sound principle of law.

30. The learned counsel for the petitioners/appellants have argued that Right to equality is guaranteed under Article 14 of the Constitution which incorporates the principle of equal pay for equal work and same has been violated in present case by granting pension under 1972 Pension Rules to the employees of some autonomous educational institutions like KVS, NCERT etc. and denying that benefit to the employees of NVS. The learned Counsel pointed out that parity

in pay and pension be granted, particularly, between the employees of NVS and the employees of KVS as both these institutions are run by autonomous bodies registered under Societies Registration Act, 1860 under the aegis of the Ministry of Human Resource Development, Government of India and are fully funded by the Government of India. Also, that the working hours of the teachers in NVS are more as compared to the KVS and the JNVS being fully residential schools, the burden on teaching and non-teaching staff is much more than Kendriya Vidalayas which are only day schools. The learned Counsel has brought to the fore recommendations of various committees and authorities which have supported the cause of the Petitioners, namely, Review Committee set up by the Ministry of HRD under Chairmanship of Shri Y.N. Chaturvedi to review the Management Structure and Operating Mechanism of JNVS, 154th report of the Department Related Parliamentary Committee on functioning of JNV which was laid before Lok Sabha on 02-03-2005, Cabinet Note prepared by the Ministry of HRD in March 2006 which specifically pointed out the need to extend the Pension Scheme under 1972 Rules to the employees of JNVS, 198th Report of the Department Related Parliamentary Committee submitted on 17-08-2007 which strongly recommended for implementing the Pension Scheme to the employees of JNVS. Even the Ministry of Labour and Employment by its O.M. dated 07-09-2006 to the Ministry of HRD, recommended extension of Pension Scheme to NVS.

31. Learned Additional Solicitor General, appearing on behalf of the respondents submitted that the issue of extending Pension Scheme of 1972 to the NVS employees is an administrative decision which is made keeping in mind various determining factors and that it cannot be said all schools and educational institutions constitute one class. She cited *All India Sainik Schools Employees Association v. Defence Minister-cum-Chairman Board of Governors, Sainik School*, 1988 (1) Supp SCC 205, wherein the Sainik School employees had sought writ of mandamus to extend all service benefits and advantages to them as are applicable to the employees of the KVS. In the said case the Supreme Court dismissed the petition on the ground that the employees of Sainik Schools cannot be considered employees of the Central Government nor can they be treated at par with KVS employees.

32. The Respondent also relied on *S.C. Chandra v. State of Jharkhand*, (2007) 8 SCC 279, wherein this Court held that the doctrine of 'equal pay for equal work' is applicable only when there is total identity in two groups of employees. Further, in *A.K. Bindal* (supra), this Court has held that employees of Government companies are not Government servants. It is, therefore, submitted on behalf of the respondents that the petitioners/appellants are

employees of the autonomous body that is Navodaya Vidyalaya Samiti which has all the control on the organization.

33. It may be expedient to note what this Court observed in the case of *S.C. Chandra* (supra):

> "…fixing of pay scales by the Courts by applying the principle of equal pay for equal work upsets the high constitutional principle of separation of powers between three organs of the state. Realizing this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesome identity between the two groups (and there too the matter should be sent for examination by an expert committee appointed by the Government instead of the Court itself granting higher pay)"

34. Further, the learned counsel appearing for the Appellants have contended that the pension is not a bounty given to the employee at the will of the Government but a valuable right vested in the employee and a right to receive pension is a "property" under Article 31 of the Constitution of India as was held in *State of Kerala v. M. Padmanabhan Iyer*, (1985) 1SCC 429. Further, the learned Counsel for the Appellants submitted that the pension is that part of the salary which was not given to the employee during his/her service but was kept for payment as pension, so now the employer cannot deny the employees what is rightfully employees' because, if there was no pension to be paid, employees would have had higher salary.

35. Learned Additional Solicitor General has submitted that the right to pension is not an inherent right of every employee but it flows from the rules of the Government. If the employee is entitled to pension as per the rules of the Government, his/her pension cannot be withheld by a simple executive order (*Deokinandan Prasad v. State of Bihar & Ors*. (1971) 2 SCC 330). Similarly, it is submitted that if the employee is not entitled to the pension as per the rules governing his/her service conditions, he/she cannot claim it as of right inherent to the employment.

36. Further, the Counsel for the appellants' argument regarding the pension being part of the salary is accepted as the principle governing pension but it cannot be applied to the present case as the employees in the present case were not promised any pension at the time of their appointment and no deductions were made during their service towards any pension fund. Thus, it cannot be said that the employees have been denied what was rightfully theirs.

37. The Appellants had raised the issue of the New Pension Scheme which was notified in 2008 and whose cut-off date was 01.01.2004 in the writ petition and the SLP, however, it wasn't pressed during the arguments. In any case, they have claimed that the New Pension Scheme, is also discriminatory and that the said cut-off date is

arbitrary. The learned counsel for the appellants submitted that the New Pension Scheme is not at par with the Pension Scheme under 1972 Rules as it does not have provisions for death gratuity, family pension and medical benefits. Also, the two tier system of the New Pension Scheme was challenged.

38. We have carefully perused the judgment of the High Court of Jharkhand in W.P. 4946 of 2008 against which SLP(C) No.19102/2012 has been filed and we concur with the view of the High Court. The cut-off date is a domain of the employer and so the introduction of new scheme of pension will be done considering all the relevant factors including financial viability of the same. No interference is warranted unless there is gross injustice is perpetrated. The Appellants have failed to prove any arbitrariness and discrimination with respect to the New Pension Scheme.

39. In the light of the discussion in the foregoing paragraphs, the writ petitions and the appeal are also dismissed. However, there shall be no order as to costs.

……………………………..J.
(Anil R. Dave)

....................................J.
(Vikramajit Sen)

....................................J.
(Pinaki Chandra Ghose)

New Delhi;
January 20, 2015.