REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4703 of 2009

PEPSU Road Transport Corporation, Patiala Through its Managing Director & Anr. .....**Appellants**

Versus

S. K. Sharma & Ors. .....**Respondents**

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J U D G M E N T

SHIVA KIRTI SINGH, J.

1. This appeal by special leave assails the judgment and order dated 24.04.2006 passed by a Division Bench of High Court of Punjab and Haryana dismissing LPA No. 700 of 2002 preferred by the appellants and affirming the judgment of learned Single Judge dated 11.01.2002 whereby Writ Petition bearing CWP No. 11908 of 1992 preferred by some of the respondents was allowed. Some had preferred to file suits and Civil Appeals which were dismissed. Their Regular Second Appeal No. 430 of 1995 was tagged with the above writ petition and was allowed by the same common judgment enabling all the 21 respondents to refund a part of CPF (Govt. Contribution) or agree for adjustment, to obtain pensionary benefits.

2. The respondents filed the writ petition in 1992 claiming that they were appointed originally in a department of PEPSU described as PEPSU Roadways, between January 1955 and September 1956. It is not in dispute that in the PEPSU Roadways the respondents' appointment was only on temporary basis. PEPSU Roadways lost its utility due to creation of PEPSU Road Transport Corporation (hereinafter referred to as the 'Corporation'). Copy of notification dated 07.01.1956 available on record shows that Corporation was created by this notification under the provisions of the Road Transport Corporation Act, 1950 enforced with effect from 10.08.1954. The State Government through the Chief Secretary issued a letter dated 16.10.1956 informing the General Manager, PEPSU Roadways, Patiala (with reference to PEPSU Roadways' communication dated 14.10.1956) that His Highness the Rajpramukh had ordered the transfer of PEPSU Roadways to the PEPSU Road Transport Corporation (with effect from 15.10.1956 forenoon) on various terms and conditions in respect to evaluation of the assets of the PEPSU Roadways as well as sharing the burden for payment of the employees of the Corporation. The letter indicates that the Corporation was requested to draw up the agreement required by clause (h) of sub-section (2) of Section 19 of the Road Transport Corporation Act, 1950 and forward the same to the Government for approval and signatures. On account of the States Reorganization Act

the merger of State of PEPSU with the State of Punjab became effective from 01.11.1956. Through an Order no. 61 dated 30.11.1956 the Corporation admitted that PEPSU Roadways stood taken over by the Corporation from 16.10.1956 (before noon), so the services of all the temporary employees stood transferred to the Corporation with effect from 16.10.1956 on the prevailing terms and conditions till the approval of new terms and conditions by the Corporation. The respondents never challenged this declaration, got promotions etc. and continued to serve the Corporation till they all retired between 1989 and 1991. It is not in dispute that PEPSU Road Transport Corporation Regulations which was framed in 1957 provided for Contributory Provident Fund (CPF). There was no provision for grant of pension. Much after the retirement of the respondents, only with effect from 15.06.1992 the Corporation framed PRTC Employees Pension/Gratuity and General Provident Fund Regulations, 1992 (hereinafter described as 'Regulations of 1992'). Under these Regulations, for the first time pension was introduced in the Corporation.

3. Soon after the enforcement of Regulations of 1992 the respondents who had already received their retiral benefits under the 1957 Regulations filed the writ petition at hand. Originally the grievance of the respondents in the writ petition was as to why the Regulations of

1992 have not been made retrospective but through an amendment in 1998, the writ petition was substantially amended so as to claim that they continued to be employees of the State in the department of PEPSU Roadways till PEPSU State was reorganized and from 01.11.1956, the date of reorganization they became employees of State of Punjab with right to pension as available to Government servants. The Single Judge allowed the writ petition on the premise that the respondents had simply been transferred from the parent department to serve in the Corporation and therefore they continued to be Government servants because there was no order passed for their absorption in the Corporation. The Letters Patent Appeal preferred by the appellants was dismissed by the judgment and order dated 24.04.2006 which is under challenge in this appeal.

4. It is significant to note that the letter of Chief Secretary dated 16.10.1956 informing the General Manager, PEPSU Roadways of Government's decision on the subject of transfer of PEPSU Roadways to the Corporation was not placed before the High Court by the writ petitioners although it finds a specific mention in Order no. 61 dated 30.11.1956 passed by the General Manager, PEPSU Road Transport Corporation. Hence this Court, apparently in the larger interest of justice, by order dated 20.08.2015 permitted the appellants to place on record the consent of the respondents and necessary documents to

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show that the respondents accepted transfer from PEPSU Roadways to the Corporation. The additional fresh documents were filed after service upon the respondents who were granted accommodation on that ground on 24.11.2015. The additional documents were filed with an affidavit on behalf of appellants and include a copy of letter dated 16.10.1956. The respondents have not objected to the correctness and authenticity of the additional documents and hence those documents have been taken on record and used by learned senior counsel for the appellants in support of his contentions.

5. On behalf of the appellants learned senior counsel Mr. Rakesh Dwivedi first took us through the letter dated 16.10.1956 and also the subsequent order dated 30.11.1956. He showed by way of illustration that one of the respondents Mr. O.P. Trehan through letter dated 01.03.1965 had opted to serve the Corporation. He also placed reliance on order dated 02.06.1986 of the Corporation by which Mr. S.K. Sharma, another respondent was promoted as Sr. Depot Manager which he accepted. That order clearly stipulated that he will be governed by the rules in force and those that may subsequently be framed for the officers of the Corporation. Before advancing submissions in respect of issues of law, Mr. Dwivedi emphasised that being temporary employees of PEPSU Roadways till 15.10.1956, the respondents under then prevailing service rules of the State

Government were not entitled to pension as temporary employees even till their department i.e, PEPSU Roadways was merged with the Corporation by the decision of the State Government. Therefore, it is contended that they have not suffered any adverse consequences on account of merger; rather they became permanent employees of the Corporation, obtained promotions and on retirement availed all the lawfully admissible benefits of CPF and gratuity without any protest and demur.

6. On behalf of appellants Mr. Dwivedi has advanced the following submissions:

(1) The relevant Department, PEPSU Roadways itself ceased to exist and be a Department and was merged with the Corporation totally and completely by 16.10.1956. The Department merged along with the posts, assets, liabilities and the respondent employees. There was no protest or challenge to such merger by way of transfer of the entire Department to the Corporation.

(2) The word "transfer" is not used in the Government's decision evidenced by letter dated 16.10.1956 in the narrow sense of "transfer and posting" to another post or place. Rather, it connotes transfer as merger of the entire Department with assets, liabilities, posts and employees including their service

and hence there was no occasion or need for any order of absorption in respect of the respondents.

(3) Since the transfer/merger of the Department was complete much before the date 01.11.1956 when PEPSU State merged with the State of Punjab under the States Reorganization Act, the respondents cannot claim to have become employees of State of Punjab by virtue of Section 115 of States Reorganization Act. This provision could have helped them only if the Department-PEPSU Roadways could have existed till 01.11.1956 or if they had been simply deputed to work in the Corporation under usual terms of deputation while retaining their lien on posts available under the State Government.

7. Learned senior counsel for the appellants elaborated his submissions by contending that the High Court erred in relying upon various sub-sections and provisos to Section 115 of the States Reorganization Act and such error was on account of failure to appreciate that the respondents ceased to have for them any post in the Government due to complete transfer/merger of the PEPSU Roadways with the Corporation much before 01.11.1956. It was also contended that the High Court failed to appreciate that as temporary employees with very little service to their credit, the respondents were not put to any disadvantage on account of transfer/merger because being temporary

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employees in 1955 and 1956, they were then not entitled to pension under the PEPSU Services Regulations governing pensions, particularly sub-rule (a) of Rule 1.2 in Chapter 1 which contains general rules relating to pensions for superior and inferior service. The rule reads thus:

> "**Cases in which claims to pension are inadmissible**
> 1.2 In the following cases no claim to pension is admitted:-
>
> (a) When a Government servant is holding an appointment of a temporary nature or is paid for definite work done for the Government without being permanently employed."

8. Lastly, it was contended on behalf of appellants that the High Court should not have entertained the writ petition in 1992 or allowed substantial amendments in 1998 to permit claims made belatedly after decades and after superannuation from the service of the Corporation. Such claims should have been rejected on the ground of delay. In support of this plea reliance was placed upon judgment in the case of **PEPSU Road Transport Corporation, Patiala v. Mangal Singh and Ors.**[1] In this case the respondents were still in service as the employees of the appellant Corporation when the Regulations of 1992 introduced a pension scheme but they did not exercise option for pension within the stipulated time. Moreover, they also availed of

1 (2011) 11 SCC 702

retiral benefits arising out of CPF and gratuity without any protest. This Court held that the respondents on account of failure on their part, could not claim benefit under the pension scheme. Particular reliance was placed upon the following observations at the end of paragraph 35;

> ".....On the receipt of CPF amount, the relationship between employee and employer ceases to exist without leaving any further legal right or obligation qua each other."

Since most of the respondents in that case also had retired after serving for several years since the enforcement of Regulations of 1992 and had advanced claim for pension after accepting CPF etc., in para 52 this Court counted the delay of about eight years from the introduction of pension scheme in 1992 and held such delay was unreasonable. On that basis it has been urged on behalf of appellants that through amendment made in 1998 the respondents gave up their claim for pension under the Regulations of 1992 and instead claimed pensionary rights by indirectly mounting a challenge to the decision of the State Government evident from letter dated 16.10.1956, merging PEPSU Roadways with the Corporation. Their claim of being in the employment of State and to have suffered the effect of States Reorganization Act and merger of PEPSU State with the State of Punjab on 01.11.1956 was clearly a claim made after unusual delay of

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several decades and the High Court should not have condoned such delay.

9. In reply, Mr. S.K. Sharma learned counsel for the respondents advanced arguments in support of the impugned judgment. As per his submissions, even after the transfer of Roadways Department to the Corporation, there was legal necessity of issuing formal orders showing absorption of respondents as employees of Corporation under a valid resolution of the Corporation. He relied upon findings of the High Court that there was no order or resolution for such absorption. On behalf of respondents reliance was placed upon judgment in the case of **Vice Chancellor, Utkal University & Ors. v. S.K. Ghosh & Ors.[2],** to support the proposition that a corporate body like University acts through formal resolution arrived at in a proper manner by the competent body. The facts of this case were entirely different. The appellant before this Court was Vice-Chancellor of a University who was aggrieved by the High Court judgment interfering with the cancellation of an examination through resolutions of the University Syndicate. The High Court invalidated the resolution for want of proper notice vide agenda for the meeting as well as lack of justification for cancellation of the examination. This Court reversed

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2 AIR 1954 SC 217

the judgment of the High Court on both counts. The ratio of the judgment does not help the respondents.

10. Respondents next relied upon judgment in the case of **State of Punjab v. Nirmal Singh.**[3] In this case State of Punjab was aggrieved by impugned judgment of the High Court whereby minor punishment imposed upon Nirmal Singh was set aside. This Court allowed the appeal and reversed the judgment of the High Court on a finding that there was no requirement under the rule to grant a personal hearing for imposition of a minor penalty and that the High Court had erred in treating the order of the competent authority as a non-speaking order. This case also is not relevant for deciding the controversy at hand.

11. To meet the allegation of delay, reliance was placed upon **S.R. Bhanrale v. Union of India and Ors.**[4] The appellant in that case retired as an officer in the Department of Telecommunications, Government of India and received pension immediately on retirement. For no good reasons his other retiral benefits and claims remained unsettled in spite of several representations. After serving the notice under Section 80 CPC and approximately after three years he moved the Central Administrative Tribunal. While the matter was pending with this Court, upon directions of the Department, the appellant was

3 (2007) 8 SCC 108

4 (1996) 10 SCC 172

paid some of the benefits. At the stage of final hearing, this Court considered the circumstances and observed that in the facts of the case the Union of India was not justified in raising the bar of limitation against the dues of the appellant. It cannot be claimed by way of general rule simply on the basis of aforesaid judgment that in all cases of claim for pension, the plea of delay or limitation cannot be considered by a writ court. Only where the retiral benefits have been wrongly withheld and not paid despite numerous representations and as observed in para 4 of the aforesaid judgment the delay is not of decade or so the Court may not appreciate a plea of limitation raised by the Government. In the present case admission or declaration made by the Corporation on 30.11.1956 through Order no. 61 that services of the respondents, i.e., of all temporary employees stood transferred to the Corporation with effect from 16.10.1956 and shall be governed by the new terms and conditions as and when approved by the Corporation was within the knowledge of the respondents and they accepted such orders of the Government and the Corporation from 1956 till their retirement and even thereafter till the enforcement of Regulations of 1992 which led to filing of writ petition by them in 1992. Clearly the respondents acquiesced to the entire situation and accepted their status as employees of the Corporation leading to admissible retiral benefits. In such circumstances, the aforesaid

judgment cannot help the respondents. The appellant Corporation was fully justified in raising the plea of delay and latches. The High Court erred in ignoring such plea when the delay was quite unusual. We find no material to satisfactorily explain such delay.

12. Appearing for some of the respondents, further reply was advanced by Mr. M.K. Dua, Advocate. He contended that as per Section 11 of the States Reorganization Act, the merger of PEPSU with Punjab State was effected on 01.11.1956 and therefore from such date, by virtue of Section 115(1) of the States Reorganization Act the respondents were rightly treated by the High Court to have acquired the status of Government servant in the successor State of Punjab. He referred to pleadings in the writ petition to the effect that in 1956 the respondents were transferred to the Corporation without being given any opportunity of exercising option. It was also urged that in reply the other side did not controvert such a plea nor there was any reply to the claim that the respondents were not issued with any formal order of absorption. He relied upon judgment of this Court in **Fertilizer Corporation of India Ltd. v. Union of India & Ors.**[5] in support of a proposition that unless the absorbing body/authority issues an order for absorption of a Government officer in its service on a permanent basis, mere correspondence or any order of notification

5 (1996) 3 SCC 325

issued by others cannot confer benefits of absorption on such Government officer. It would suffice to note that the claim of absorption made by an individual officer was being denied by the absorbing body and the proposition noted above was mooted by the Court in the facts where such individual claim is being denied by the concerned organization. The facts in the present case are entirely different. In support of same proposition of law reliance has been placed upon **Mysore State Road Transport Corporation v. A. Krishna Rao and Anr**.[6] In Mysore State R.T.C. case the concerned employee of Bangalore Transport Company Ltd. by virtue of statutory provisions became employee of the State. Thereafter there was no order of transfer or merger of the concerned department with the subsequently formed Corporation. The Corporation was directed to take over only those employees who opted for its service. Since the concerned respondent- employee was not given any notice of option it was held that he could not claim to be an employee of the Corporation.

13. Respondents have placed reliance also upon case of **National Insurance Company Ltd. v. Kirpal Singh**[7] to contend that since provision for payment of pension is beneficial in nature, the provision

6 1973(1) SLR 1080

7 (2014) 5 SCC 189

ought to receive a liberal interpretation so as to serve the object of the pension scheme as well as any special scheme like a voluntary retirement scheme. On facts the said judgment dealt with the provisions of Voluntary Retirement Scheme which required interpretation. The present case does not raise any such issue as to interpretation of any pension scheme. Reliance was also placed upon case of **S.K. Rattan v. Union of India & Ors.**[8] Para 13 of that judgment contains the reasons indicated by this Court for holding that by sheer transfer of an employee from an institution like CBI to another organization, the officer cannot be made to suffer in his service conditions without framing appropriate rules under Article 309 of the Constitution as it would amount to discrimination for no justifiable reasons. In that case, the submission on behalf of the Union of India were not accepted because this Court found that till the officer retired from service, no separate service rules had been framed for the officers of the organization where he was transferred but in the case at hand the PEPSU Road Transport Corporation Regulations providing for CPF has been framed as back as in 1957. The said judgment is therefore of no help to respondents. Reliance placed upon **State of Haryana & Ors. v. Amar Nath Bansal**[9] is

8 (2014) 4 SCC 144

9 (1997) 10 SCC 700

equally misconceived because in that case there was no dispute that the respondent was an employee of the State of PEPSU and, therefore, on and from the appointed date he became amenable to Punjab Service Rules under which he was rightly retired at the prescribed age. In reply, learned senior counsel for the appellants has rightly taken a stand that most of the cases noted above on which respondents have placed reliance relate to individual employees who had been transferred on deputation and, therefore, are clearly distinguishable. They can have no application to the present matter because prior to 01.11.1956 the respondents had ceased to be Government servants under the PEPSU State with effect from 16.10.1956 and had become servants of the Corporation.

14. Further reply of the appellants is that respondents chose not to challenge or resist the decision of the PEPSU State whereby the entire department where they were working as temporary employee was by transfer merged with the Corporation. They chose this course because they had no right to post held by them and could have been out of employment. Since the department itself ceased to exist there were no posts on which the respondents could claim lien and in absence of any such post or lien they cannot claim to be Government employee of PEPSU State till 01.11.1956, the date of the merger of PEPSU State with Punjab. By placing reliance upon Section 34 of the Road

Transport Corporation Act, 1950, it has been urged on behalf of the appellants that the State Government has statutory power to give the Corporation general instructions including directions relating to the recruitment, conditions of service and wages to be paid to the employees etc. The Corporation is saddled with a statutory obligation not to depart from such general instructions. Therefore, the letter of Chief Secretary dated 16.10.1956 containing direction of the State Government was binding upon the appellant-Corporation and as a result without need of any individual orders of absorption the entire establishment of the transferred department had to be taken over by the Corporation. The absorption of the employees in law was complete on 16.10.1956 due to such order of transfer and amalgamation. The Corporation had no option to seek options and to issue orders of absorption as per its discretion or will. The respondents being temporary employees had the option either to quit the service of the Corporation or challenge the orders or directions of the State Government but they chose to do neither.

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15. By relying upon paragraph 54 of the unamended writ petition learned senior counsel for the appellants submitted that in fact the respondents had admitted in their initial stand that PEPSU Roadways merged with the Corporation on 16.10.1956. A perusal of said paragraph 54 shows that respondents accepted the aforesaid facts

and their only stand was since "they did not give any option to the effect they would not claim any pensionary benefits", they will remain Government employees entitled to pensionary benefits.

16. The main controversy in this case is whether the claim of the respondents, a group of twenty one employees of PEPSU Roadways that in spite of transfer of that department to the Corporation they continue to be actually Government servants and therefore entitled to retiral benefits instead of CPF is acceptable or not. In this controversy, a judgment of this Court though rendered in slightly different factual matrix is substantially relevant and helpful. In **D.R. Gurushantappa v. Abdul Khuddus Anwar and Ors.**[10] an issue arose in the context of election of the Mysore Legislative Assembly as to whether the respondent was holding office of profit under the Government. The respondent no. 1 of that case was initially a Government servant but subsequently the Government concern where he was working was taken over by a company registered under the Indian Companies Act, 1956. The shares of the company were fully owned by the Government but after the Government undertaking was taken over by the company, the employees were no longer governed by the Mysore Civil Services Regulations, their conditions of service came to be determined by the standing orders of the company. The first

10 1969 (1) SCC 466

contention against respondent no. 1 was that since he was initially a Government servant, even after the concern was taken over by the company he would continue to be in the service of the Government. While dealing with this issue in paragraph 3, this Court rejected the contention in the following words:

> "**3.** So far as the first point is concerned, reliance is placed primarily on the circumstance that, when the concern was taken over by the Company from the Government there were no specific agreements terminating the Government service of Respondent 1, or bringing into existence a relationship of master and servant between the Company and Respondent 1. That circumstance, by itself, cannot lead to the conclusion that Respondent 1 continued to be in government service. When the undertaking was taken over by the Company as a going concern, the employees working in the undertaking were also taken over and since, in law, the Company has to be treated as an entity distinct and separate from the Government, the employees, as a result of the transfer of the undertaking, became employees of the Company and ceased to be employees of the Government."

17. In the facts of the case, we have no hesitation to hold that the High Court erred in allowing the writ petition and second appeal of the respondents and in dismissing the Letters Patent Appeal of the appellants. The judgments on which the respondents have relied upon for advancing the submission that they cannot lose the status of a Government servant till they are absorbed in the Corporation after offering an option in favour of such absorption is entirely misconceived and inapplicable in the facts of the present case. The

stand of the respondents could have been acceptable had there been no decision of the PEPSU State as evidenced by the letter of Chief Secretary dated 16.10.1956 which finds mention and reiteration by way of admission by the Corporation in order dated 30.11.1956. There can be no such belated challenge to the decision of PEPSU State whereby PEPSU Roadways, one of the departments came into and merged with the Corporation lock, stock and barrel before the merger of PEPSU with Punjab on 01.11.1956. Hence, the provisions of the States Reorganization Act ceased to have any significance in the matter because the respondents ceased to be employees of State Government of PEPSU prior to 01.11.1956. They accepted such merger and alteration of their service conditions without any protest. Since 1957, under the Regulations of the Corporation they participated and contributed to the scheme of CPF and obtained the benefits of retirement from the Corporation between 1985 and 1991 without any protest. The High Court clearly erred in ignoring such conduct of the respondents, the effect of the Chief Secretary's letter dated 16.10.1956 containing decision of PEPSU State and its acceptance by the Corporation reflected by the order dated 30.11.1956. The High Court further erred in relying upon law which is applicable when there is no merger of Government concern with the private concern but only individual employees are transferred on

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deputation or on foreign service to other organizations/services. The ordinary rules providing for asking of option or issuance of letters of absorption depend upon nature of stipulations which may get attracted to a case of deputation. There may be similar stipulations in case of merger by transfer. But if there are no such stipulations like in the present case then the transferee concern like the Corporation has no obligation to ask for options and to issue letters of options to individual employees who become employees of the transferee organization simply by virtue of order and action of transfer of the whole concern leading to merger. No doubt in case of any hardship, the affected employees have the option to protest and challenge either the merger itself or any adverse stipulation. However, if the employees choose to accept the transition of their service from one concern to another and acquiesce then after decades and especially after their retirement they cannot be permitted to turn back and challenge the entire developments after a gap of decades.

18. On the basis of laws and facts discussed above, we are constrained to hold that the respondents had accepted to continue as employees of Corporation pursuant to order of merger/transfer of PEPSU Roadways with effect from 16.10.1956 and on completing their service under the Corporation and reaching the age of retirement they were entitled to receive only the benefits of CPF and gratuity as admissible to them

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under then prevailing regulations of the Corporation. Since they accepted those retiral benefits there is no relationship left between the Corporation and the respondents and in such a situation further claim against the Corporation that it should treat the respondents to be Government servants and adjust their retiral benefits accordingly was totally untenable and wrongly allowed by the High Court. The impugned judgment of the High Court granting relief to the respondents is therefore set aside. The second appeal and the writ petition of the respondents shall stand dismissed. This appeal is accordingly allowed but the parties are left to bear their own costs.

..J.
[SHIVA KIRTI SINGH]

..J.
[R. BANUMATHI]

New Delhi.
August 8, 2016.

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