

SUPREME COURT OF INDIA

State of U.P.

Vs.

Dayanand Chakrawarty

C.A.No.5527 of 2012

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya JJ.)

02.07.2013

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. These appeals Nos. 5527 of 2012, 5528 of 2012 and 5617-5659 of 2012 (arising out of SLP(C) Nos.31279 of 2010, 35579 of 2010, 5218-60 of 2011) have been preferred by the State of Uttar Pradesh and others against the common judgment dated 29th July, 2010 passed by the Division Bench of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition (C) No.1595(S/B) of 2009 etc.etc. whereby the High Court declared Uttar Pradesh Jal Nigam Employees (Retirement on attaining age of superannuation) Rules, 2005 which have created two separate age of retirement amongst same classes of employees discriminatory and unconstitutional and held that the employees of the Jal Nigam are entitled to continue in service upto the age of 60 years with further directions to pay 20% of back wages to those writ petitioners who in the meantime were forced to retire on attaining the age of 58 years in absence of any interim order in their cases.

The benefit of enhancement of age was confined to the persons who had filed the writ petitions before their retirement and was not granted to those who in the meantime retired at the age of 58 years and had not moved before the High Court.

The other appeals have been preferred against the judgments subsequently passed on 29th April, 2010, 17th August, 2010, 16th September, 2010, 28th

October, 2010, 3rd December, 2010 which were disposed of in terms of the aforesaid judgment dated 29th July, 2010.

Before the High Court Writ Petition No.1191(SB) of 2009 was filed by the U.P. Engineers Association Jal Nigam, praying therein to declare U.P. Jal Nigam Karamchari (Adhivarshita Par Seva Nivarti) Viniyamawali, 2005 [U.P. Jal Nigam Employees (Retirement on attaining age of Superannuation) Regulations, 2005] (hereinafter referred to as the “Regulations, 2005”) unconstitutional and ultra vires to the provisions of the Constitution of India and further to quash the orders dated 3rd July, 2009 and 29th June, 2009 passed by the respondents 1 and 2 to the writ petition, respectively. The other prayers were to restrain the respondents from causing retirement of the members of the writ petitioners’ association at the age of 58 years as well as to allow them to continue to work till they attain the age of 60 years.

Except the aforesaid writ petition, in all other writ petitions, writ petitioners have challenged their respective order (s) whereby they had been asked to retire on attaining the age of 58 years as per the provisions of Regulations, 2005.

2. The questions involved in these appeals are:

(i) Whether two different age of superannuation of 58 and 60 years can be prescribed for the employees similarly situated, including members of the same service, solely on the basis of their source of entry in the service.

(ii) Whether ‘the Uttar Pradesh Jal Nigam (Retirement on attaining age of Superannuation) Regulations, 2005’ fixing two different age of superannuation for similarly situated employees of Jal Nigam are discriminatory and ultra vires under Article 14 of the Constitution of India.

3. The factual matrix of the case are as follows:

A department, known as Public Health Engineering (hereinafter referred to as the 'PHED') was created during the British period for performing all the works related to public health engineering including sewerage and water supply. Just before the independence, the State of United Province created a Local Self Government Engineering Department (hereinafter referred to as the 'LSGED') which was converted from PHED. All the engineering works

of Local Self Government were entrusted to the said newly created department.

4. By Notification dated 18th June, 1975 issued under Section 3 of the Uttar Pradesh Water Supply and Sewerage Act, 1975 (hereinafter referred to as the “Act, 1975), the State Government constituted Uttar Pradesh Jal Nigam (hereinafter referred to as the “Nigam”). Section 37(1) of the Act, 1975 provided that the services of the employees and engineers of the Local Self-Government Engineering Department (LSGED) will be transferred and merged into the newly created Nigam on the same terms and conditions, which were governing their services prior to such absorption, till the said service conditions are altered/changed by the Rules or Regulations framed in accordance with law.

5. In its second meeting dated 4th April, 1977 vide Agenda Item No.2.21 the Board of Nigam resolved that all the provisions of Financial Handbook, Manual of Government Order, Civil Services Regulations, Government Servant Rules and other Government orders shall be applicable to the employees of the Nigam, provided the Nigam has not passed any other order.

Initially, in exercise of powers conferred under sub-section (1) and clause (c) of sub-section (2) of Section 97 of Act, 1975 and with the previous approval of the State Government, the Nigam made regulations for regulating the recruitment to the posts and the conditions of service of persons appointed to the Uttar Pradesh Jal Nigam Service of Engineers (Public Health Branch) known as the Uttar Pradesh Service of Engineers (Public Health Branch) Regulations, 1977.

6. Subsequently, in exercise of powers conferred under sub-section (1) and clause (c) of sub-section (2) of Section 97 of the Act, 1975, and with the previous approval of the State Government, Nigam made the “Uttar Pradesh Jal Nigam Services of Engineers (Public Health Branch) Regulations, 1978” (hereinafter referred to as the “Regulations, 1978”) for regulating the recruitment to the posts and the conditions of service of persons appointed to the Jal Nigam Engineers (Public Health Branch). The said Regulations, 1978 were made equally applicable to the employees transferred and merged from the erstwhile LSGED and the employees directly recruited by the Nigam and it came into force w.e.f. 27th April, 1978. Regulation 31 relates to pay, allowance, pension, leave and other conditions of service which reads as follows:

“Regulation 31.- Except as provided in these regulations the pay, allowance, pension, leave, imposition of penalties and other conditions of service of the members of the service shall be regulated by rules, regulations or orders applicable generally to the Government Service in connection with the affairs of the state.”

7. There is no separate provision for age of superannuation of employees of the Nigam prescribed under Regulations, 1978. As per Regulation, 31, the terms and conditions of service of the employees of the Nigam shall be governed by the same rules, regulations and orders generally applicable to the employees of the State Government and hence the retirement and superannuation age of employees of the Nigam shall stand governed by the provisions of Rule 56(a) of the Uttar Pradesh Fundamental Rules contained in the Financial Handbook, Volume II, Part II-IV, which reads as follows:

“Rule 56(a).Except as otherwise provided in other clauses of this rule every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He may be retained in service after the date of retirement on superannuation with the sanction of the government on public grounds which must be recorded in writing but he must not be retained after the age of sixty years except in very special circumstances.”

The age of retirement of the State Government employees as per Rule 56(a) of Uttar Pradesh Fundamental Rules was 58 years. In the year 2001, the State Government vide its Official Order No.1098/A-1/2001 dated 28th November, 2001 informed of its intention to amend clause (a) of Rule 56. Consequently, Rule 56(a) was amended by “The Uttar Pradesh Fundamental (Amendment) Rules, 2002” vide Notification dated 27th June, 2002, which came into force on 28th November, 2001. As per the amended clause (c) of Rule 56, the age of superannuation of the State Government employees was enhanced from 58 years to 60 years, which reads as follows:

“Rule 56(a).Except as otherwise provided in this rule, every government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.

Provided that a Government servant whose date of birth is the first day of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.

Provided further that a Government servant who has attained the age of fifty eight years on or before the first day of November, 2001 and is on extension in service shall retire from service on expiry of his extended period of service.”

8. In the meantime, after issuance of Government’s order expressing its intention to amend clause (a) of Rule 56 by Notification dated 28th November, 2001, the Nigam by its letter dated 31st December, 2001 enquired from the State Government as to whether the benefit of enhancement in the age of superannuation from 58 years to 60 years would be applicable to the employees of the Nigam or not. In reply thereto just before the Amendment Rules, 2002, the special Secretary to the State Government from its Department of Local Self Government by his letter dated 22nd January, 2002, conveyed that the employees of the Nigam shall not be entitled to the enhancement of age of superannuation from 58 years to 60 years as the same would be applicable only to the State Government employees. On receipt of the said letter, on 11th July, 2002 the Nigam resolved that enhancement in the age of superannuation from 58 years to 60 years would not be applicable to the employees of the Nigam.

Against the decision of the State Government dated 22nd January, 2002 and the decision of the Nigam vide Office Memorandum dated 11th July, 2002 a number of writ petitions were preferred by the employees of the Nigam who were being sought to retire on completing the age of 58 years. Some of the employees directly filed writ petitions before this Court challenging the orders issued by the Nigam against them to the effect that they would superannuate upon completion of 58 years. This Court by its judgment in *Harwindra Kumar vs. Chief Engineer, Karmik and others*, 2005 (13) SCC 300 directed the Nigam to continue the petitioners of those cases in service till they attain the age of 60 years and the orders directing their retirement at the age of 58 years were set aside with the following observation:

“9. In the present case, as the Regulations have been framed by the Nigam specifically enumerating in Regulation 31 thereof that the Rules governing the service conditions of government servants shall equally apply to the employees of the Nigam, it was not possible for the Nigam to take an administrative decision acting under Section 15(1) of the Act pursuant to the direction of the State Government in the matter of policy issued under Section 89 of the Act and directing that the enhanced age of superannuation of 60 years applicable to the government servants shall not apply to the

employees of the Nigam. In our view, the only option for the Nigam was to make suitable amendment in Regulation 31 with the previous approval of the State Government providing thereunder the age of superannuation of its employees to be 58 years, in case it intended that 60 years which was the enhanced age of superannuation of the State Government employees should not be made applicable to the employees of the Nigam. It was also not possible for the State Government to give a direction purporting to act under Section 89 of the Act to the effect that the enhanced age of 60 years would not be applicable to the employees of the Nigam treating the same to be a matter of policy nor was it permissible for the Nigam on the basis of such a direction of the State Government in the policy matter of the Nigam to take an administrative decision acting under Section 15(1) of the Act as the same would be inconsistent with Regulation 31 which was framed by the Nigam in the exercise of powers conferred upon it under Section 97(2)(c) of the Act.

10. For the foregoing reasons, we are of the view that so long as Regulation 31 of the Regulations is not amended, 60 years which is the age of superannuation of government servants employed under the State of Uttar Pradesh shall be applicable to the employees of the Nigam. However, it would be open to the Nigam with the previous approval of the State Government to make suitable amendment in Regulation 31 and alter the service conditions of employees of the Nigam, including their age of superannuation. It is needless to say that if it is so done, the same shall be prospective.

11. For the foregoing reasons, the appeals as well as writ petitions are allowed, orders passed by the High Court dismissing the writ petitions as well as those by the Nigam directing that the appellants of the civil appeals and the petitioners of the writ petitions would superannuate upon completion of the age of 58 years are set aside and it is directed that in case the employees have been allowed to continue up to the age of 60 years by virtue of some interim order, no recovery shall be made from them but in case, however, they have not been allowed to continue after completing the age of 58 years by virtue of erroneous decision taken by the Nigam for no fault of theirs, they would be entitled to payment of salary for the remaining period up to the age of 60 years which must be paid to them within a period of three months from the date of receipt of copy of this order by the Nigam. There shall be no order as to costs.”

9. After the decision in Harwindra Kumar(supra), the Nigam in exercise of its powers conferred under sub-sections (1) and (2) of Section 97 of the Act, 1975, framed Uttar Pradesh Jal Nigam Employees (Retirement on the age of Superannuation) Regulations, 2005 (hereinafter referred to as the 'Regulations, 2005'). It was issued by Office Order dated 8th December, 2005 and made effective from 30th August, 2005. By Regulation 3 the retirement age of 60 years was provided but for employees and Engineers who were employed in erstwhile LSGED and who were transferred and merged in the Nigam. In Regulation 4, a separate age of superannuation at the age of 58 years was prescribed for all other employees and Engineers, who were not covered under Regulation 3 i.e. those who were directly appointed in the Nigam. Regulation 3 and 4 reads as follows:

“ Retirement on attaining age of superannuation:

3. Age of superannuation of every employee who was employed in the Engineering Department of the Local Self Government under Section 37(1) of the Act, and has been transferred to the Corporation and is employed in the Corporation, will be 60 years.

4. The age of superannuation of the employees different from those under Rule 3 above, will be 58 years. But the age of superannuation of the Group 'D' employee who have been employed prior to 5.11.1985, will be 60 years.”

After framing the aforesaid Regulation, 2005, the Nigam filed a review petition before this Court being Review Petition No.24 of 2006, seeking review of decision in Harwindra Kumar(supra). The review petition was dismissed by this Court on 29th August, 2006.

10. A number of employees challenged Regulation 4 by filing Writ Petition No.45800 of 2006, etc. The Allahabad High Court by its common judgment dated 21st May, 2007 allowed the writ petitions and held that Regulation 4 to the extent it provides superannuation age of 58 years for those employees directly recruited is arbitrary and declared it non-est. The writ petitioners were allowed to continue in service till the age of 60 years.

11. As against the aforesaid judgment, the Nigam filed a special appeal before the Division Bench of the Allahabad High Court which by order dated 1st August, 2007 stayed the declaration given by the learned Single Judge. However, so far as the writ petitioners were concerned, no interim orders were passed in the said

special appeal and as such, they were allowed to discharge their duties upto the age of 60 years.

12. The Nigam being not satisfied with the order passed by the Division Bench moved before this Court in *Chairman, Uttar Pradesh Jal Nigam & another vs. Radhey Shyam Gautam and another*, 2007 (11) SCC 507. In the said case, taking into consideration the earlier decision rendered in *Harwindra Kumar(supra)* and *Jaswant Singh(supra)* this Court dismissed the appeal with following observation:

“10. After the amendment made in Rule 56(a) of the Rules by the State Government and thereby enhancing the age of superannuation of government servants from 58 years to 60 years, the same would equally apply to the employees of the Nigam and in case the State Government as well as the Nigam intended that the same would not be applicable, the only option with it was to make suitable amendment in Regulation 31 of the Regulations after taking previous approval of the State Government and by simply issuing direction by the State Government purporting to act under Section 89 of the Act and thereupon taking administrative decision by the Nigam under Section 15 of the Act in relation to the age of the employees would not tantamount to amending Regulation 31 of the Regulations.

11. In *Harwindra Kumar* case the Division Bench decision on which the appellant places reliance was challenged. Orders passed by the High Court dismissing the writ petitions as well as those by the Nigam directing that the appellants of the civil appeals and the petitioners of the writ petitions would superannuate upon completion of the age of 58 years were set aside and it was directed that in case the employees have been allowed to continue up to the age of 60 years by virtue of some interim order, no recovery shall be made from them but in case, however, they have not been allowed to continue after completing the age of 58 years by virtue of erroneous decision taken by the Nigam for no fault of theirs. They would be entitled to payment of salary for the remaining period up to the age of 60 years which was to be paid to them within a period of three months from the date of receipt of copy of this Court's order by the Nigam.”

13. In the meantime, a large number of employees of the Nigam, who were forced to retire on attaining the age of 58 years, preferred writ petitions and sought benefit of the directions given by this Court in *Harwindra Kumar(supra)*. The matter ultimately, moved before this Court in *Chairman, Uttar Pradesh Jal Nigam vs.*

Jaswant Singh & others, 2006 (11) SCC 464. While dismissing the appeal this Court observed:

“16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the court that will unnecessarily overburden the Nigam and the Nigam will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension and other consequential benefits. Therefore, we are not inclined to grant any relief to the persons who have approached the court after their retirement. Only those persons who have filed the writ petitions when they were in service or who have obtained interim order for their retirement, those persons should be allowed to stand to benefit and not others. We have been given a chart of those nine persons, who filed writ petitions and obtained stay and are continuing in service. They are as follows:

1. Shri Bhawani Sewak Shukla
2. Shri Vijay Bahadur Rai
3. Shri Girija Shanker
4. Shri Yogendra Prakash Kulshresht
5. Shri Vinod Kumar Bansal
6. Shri Pradumn Prashad Mishra
7. Shri Banke Bihari Pandey
8. Shri Yashwant Singh
9. Shri Chandra Shekhar

And the following persons filed writ petitions before retirement but no stay order was granted:

1. Shri Gopal Singh Dangwal (WP No. 35384 of 2005 vide order dated 5-5-2005)

2. Shri R.R. Gautam (WP No. 45495 of 2005 vide order dated 15- 6-2005)

17. The benefits shall only be confined to abovementioned persons who have filed writ petitions before their retirement or they have obtained interim order before their retirement. The appeals filed against these persons by the Nigam shall fail and the same are dismissed. Rest of the appeals are allowed and orders passed by the High Court are set aside. There would be no order as to costs.”

14. In Harwindra Kumar(supra) this Court held that as long as Regulation 31 is not amended, 60 years which is the age of superannuation of government servants employed under the State of Uttar Pradesh shall be applicable to the employees of the Nigam. However, liberty was given to the Nigam to make suitable amendment in Regulation 31 with the previous approval of the State Government to alter the service conditions of employees of the Nigam, including their age of superannuation. It was also made clear that if the same is done, it shall be prospective. It appears that in view of observation of this Court, the Nigam framed Regulations, 2005 but prescribed separate age of superannuation, one for employees and engineers who were employed in erstwhile LSGED and another for those who were directly appointed in the Nigam. Regulations 2005 were so framed without repealing or amending Regulation 31.

It appears that in view of the subsequent decisions of this Court, the Nigam vide its Resolution dated 13th April, 2008, resolved to enhance the age of the superannuation of the employees, irrespective of their source of entry, to 60 years and forwarded the same to the State Government for its approval. The resolution aforesaid reads as follows:

|Agenda Item No. |Description of |Decision taken by | |Agenda |the Board
of | | |Directors | |147.07 |Regarding |Proposal approved | | |enhancement of
age |by the Board of | | |of superannuation |Directors and it is| | |from 58
years to 60 |decided to refer to| | |years, of the |the Government for | |
|officers and |obtaining the | | |officials working in|approval of the | |Uttar
Pradesh Jal |Government. | | |Nigam , similar to | | | |the working | | |
|Government | | |employees. | |

15. But the State Government provided a uniform age for superannuation as 58 years for all employees working in Government Companies and Government Corporations by its order dated 29th June, 2009. For the said reason, by its order

dated 3rd July, 2009, the State Government refused to accord approval to the recommendations of the Nigam dated 13th April, 2008.

16. On being aggrieved by the said action of the State Government the employees of the Nigam preferred the writ petitions in question before the Allahabad High Court. A number of writ petitions were heard together and disposed of by the common impugned judgment dated 29th July, 2010. The other writ petitions which were taken up or filed subsequently were disposed of by the impugned separate orders in terms with common judgment dated 29th July, 2010.

17. By the impugned common judgment dated 29th July, 2010 the Division Bench of the Allahabad High Court, Lucknow Bench, Lucknow in Writ Petition (C) No.1595(S/B) of 2009 etc.etc. declared “Uttar Pradesh Jal Nigam Employees (Retirement on attaining age of Superannuation) Regulations”, 2005 unconstitutional as it created two classes of employees in determining two separate retirement age with observation as noticed above.

18. Learned counsel for the appellant-State and the Nigam assailed the judgment mainly on the following grounds:

(i) The High Court cannot equate the employees of the public undertakings/corporations with the employees of the State Government for determination of age of superannuation.

(ii) The High Court was not justified in declaring that all the employees of the Nigam shall retire on attaining the age of 60 years like State Government employees, by pre-empting the Nigam from exercising its power under Section 97 of the Act, 1975.

(iii) The classification between the employees of Local Self- Government Engineering Department transferred to the Nigam and the employees directly recruited by the Nigam, in prescribing different age of superannuation is valid and reasonable.

(iv) The High Court was not justified in setting aside the Jal Nigam Employees (Retirement on attaining age of Superannuation) Regulations, 2005 in absence of any challenge to the power of the Nigam to frame the regulations particularly when the petitioners only challenged the Regulation

(v) The High Court committed an error of law in not considering Section 37(1) of the Act, 1975, which protects the terms and conditions of service of the employees of erstwhile Local Self- Government Engineering Department who were transferred to the Nigam on its creation.

(vi) The question of determination of age of superannuation is a matter of policy of the State Government or the competitive authority of a Corporation, and the High Court under Article 226 cannot determine the age of superannuation.

19. Thus, from a detailed analysis and close examination of facts relating to condition of service of employees of the Nigam starting from its constitution till today, the following facts emerges:

(a) The question relating to age of superannuation of employees of the Nigam stood finally concluded on 18th November, 2005 when this Court rendered decision in Harwindra Kumar (supra).

(b) After judgment in Harwindra Kumar (supra) based on liberty given by this Court, the Nigam framed Regulations, 2005 prescribing two separate age of superannuation for the employees of the Nigam, without amending Regulation 31. The Nigam subsequently by Resolution dated 13th April, 2008 proposed to amend Regulations 2005 prescribing common age of 60 years for superannuation for all employees of the Nigam. The State Government by its order dated 29th June, 2009 prescribed uniform age of superannuation as 58 years for all the employees working in the Government Undertakings i.e. Government Companies and Government Corporations and then in view of such decision, the State Government refused to accord approval to the recommendations of the Nigam dated 13th April, 2008 by its letter dated 3rd July, 2009.

20. In view of the subsequent development after decision rendered in Harwindra Kumar (supra) case, again the question of age of superannuation of employees of the Nigam has been reopened keeping in view of such fact, the question required to be determined as raised in these cases.

21. This Court in Harwindra Kumar (supra) held that so long as Regulation 31 is not amended, 60 years which is the age of superannuation of the government servants shall be applicable to the employees of the Nigam. However, in contravention of finding of this Court without amending Regulation 31, new

Regulation 3 and 4 of Regulations, 2005 has been framed by the Nigam prescribing two separate age of superannuation for similarly situated employees.

22. In *Prem Chand Somchand Shah v. Union of India* (1991) 2 SCC 48 this Court held:

“8. As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question.”

23. Since creation of the Nigam, irrespective of source of recruitment, the employees of the Nigam were treated alike for the purpose of superannuation and were allowed to superannuate at the age of 58 years as is evident from Regulation 31.

24. As per decision of this Court in *Prem Chand Somchand Shah* (supra) even amongst persons similarly situated differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute. The appellants, the Nigam as well as the State of Uttar Pradesh failed to place on record the reasons for differential treatment which distinguishes employees of erstwhile LSGED and those who were appointed directly in the Nigam.

Further, as employees appointed from different source, after their appointment were treated alike for the purpose of superannuation under Regulation 31, subsequently solely on the basis of source of recruitment no discrimination can be made and differential treatment would not be permissible in the matter of condition of service, including age of

superannuation, in absence of an intelligible differentia distinguishing them from each other. We therefore hold that the High Court by impugned judgment rightly declared Regulations, 2005 unconstitutional and ultra vires of Article 14 of the Constitution of India.

25. Regulation 31 of the 'Uttar Pradesh Jal Nigam Services of Engineers (Public Health Branch) Regulations, 1978' Special Regulation; it will not be affected by later Regulation 4 of the Uttar Pradesh Jal Nigam (Retirement on attaining age of Superannuation) Regulations, 2005, in absence of express repeal of Special Regulation. By implication it cannot be inferred that the Regulation 31 stands repealed in view of subsequent Regulations, 2005.

26. Even if it is treated that both the General Regulation 4 of Regulations, 2005 and Special Regulation 31 of Regulations, 1978 co-exist, one which is advantageous i.e. Regulation 31 shall be applicable to the members of the same service.

27. The State Government's order dated 29th June, 2009 prescribing a uniform age of superannuation at 58 years for the employees working in the Government Companies and Government Corporations cannot prevail over statutory Regulation 31 framed by the Nigam under Section 97 (2) (C) of the Act, 1975 with the previous approval of the State Government. Therefore, the employees of the Nigam shall not be guided by the State Government's order dated 29th June, 2009 but will continue in the services up to the age of 60 years, in view of Regulation 31, having not yet amended or repealed.

28. In Harwindra Kumar (supra) case this Court already held that it is not possible for the Nigam to take an administrative decision pursuant to the direction of the State Government in the matter of policy issued under Section 89 of the Act and directing that the age of superannuation of 60 years applicable to the Government servants shall not be applicable to the employees of the Nigam. In view of such finding of this Court, the Nigam cannot act on the basis of the State Government's order dated 29th June, 2009 providing uniform age of superannuation at 58 years.

29. During the pendency of these appeals further development has taken place. The Government of Uttar Pradesh by its letter No.3199/9-3-11- 113C/2011 dated 23rd December, 2011 informed the Chairman, Uttar Pradesh Jal Nigam its approval to increase the age of superannuation of full time regular officers/employees of the Nigam from 58 years to 60 years. The State Government directed to make

appropriate amendments in the Regulations framed by the Nigam, which reads as follows:

“No.3199/9-3-11-113C/2011

From: Vijay Bahadur Singh,

Special Secretary,

Government of Uttar Pradesh.

To: The Chairman,

Uttar Pradesh Jal Nigam ,

Lucknow.

Urban Developmetn Section 3 Lucknow dt. 23.12.2011

Sub: For increasing the age of retirement of full time regular employees of Uttar Pradesh Jal Nigam from 58 years to 60 years.

Sir,

This is in reference to your letter no. 86/P-1/2005-002/11 dated 23.12.2011 and Government order no.160/44-1-20911- 90/2008 dated 20.12.2011 of the Public Enterprises Bureau Section, on the above subject.

2. In this regard I have been directed to say that a meeting of the Board of Directors of Jal Nigam was held on 23.12.2011 and it was decided in the said meeting that age of retirement of full time regular officers/employees of Uttar Pradesh Jal Nigam be increased from 58 years to 60 years. The aforesaid decision of Board was considered by the Government and Government has decided that age of full time regular officers/employees of Uttar Pradesh Jal Nigam be increased from 58 years to 60 years.

3. However, the aforesaid increase in the age of retirement will be subject to the condition that all the additional financial burden which will be incurred due to aforesaid increase in the age of retirement, will be borne by Uttar

Pradesh Jal Nigam from its own resources and no financial assistance whatsoever will be given by the Government in this regard.

4. I have been further directed to say that appropriate amendments in the rules/regulations/standing orders of the Uttar Pradesh Jal Nigam pertaining to fixation of the age of retirement of the personnel of the Jal Nigam will be made by the Jal Nigam on its own.

Yours

SD/- Illegible

Vijay Bahadu Singh

Special Secretary.”

30. In view of the finding as recorded above and the State Government’s letter dated 23rd December, 2011 no interference is called for in the impugned judgment, whereby the High Court held Regulations, 2005 unconstitutional, violative of Article 14 and set aside the orders of retirements.

31. An Interlocutory Application dated 20th March, 2013 has been filed by the counsel for the respondent in Civil Appeal No.5528 of 2012 intimating that 1st respondent-Dayanand Chakrawarty expired on 17th February, 2013, during the pendency of the case, leaving behind their legal heirs, Mrs. Pramila Chakrawarty (widow), Ms. Manisha Chakrawarty (daughter), Mr. Vivekanand Chakrawarty (son), Ms. Utpana Chakrawarty (daughter) and Mr. Sampurna Nand Chakrawarty (son).

32. In view of the observation made in the preceding paragraphs as the employees including the respondents are entitled to get consequential benefits, we allow the petition for substitution to enable the heirs to derive the benefit of the decision of this Court.

33. Now the question arises as to what consequential benefits to which the respondents and other employees who have not moved before any court of law shall be entitled.

By impugned judgment the High Court observed:

“Similar benefit is already available to the employees who are continuing in service by virtue of interim order passed by the competent court. They should continue till the age of 60 years.

The law helps those who are vigilant and not to those who go to sleep as per maxim VIGILANTIBUS, ET NON DORMINTIBUS, JURA SUB VENIUNT. So, this benefit will not be given to the employees who peacefully retired on attaining the age of 58 years and never came before the Court. But there may be another class of the employees who came before this Court and could not get the interim order but writ petitions were admitted. Admittedly, these employees have not worked. So, on the basis of no pay no work, they will not be entitled for arrears. However, their back wages will be restricted @20% of the basic salary as per the ratio laid down in the case of M/s Gvalli v. Andhra Education Society 2010 AIR 1105 SC. Lastly, it is clarified that the extended service will be counted for all the purpose to the above mentioned employees. The petitions are allowed. No cost.”

34. In Harwindra Kumar vs. Chief Engineer, Karmik and others (Supra), this Court while allowing the employees of Nigam to continue till the age of 60 years in view of Regulation 31, ordered that no recovery shall be made from those who continued up to the age of 60 years. This Court further observed that the employees who have not been allowed to continue after completing the age of 58 years by virtue of erroneous decision taken by the Nigam for no fault of theirs, would also be entitled to payment of salary for the remaining period up to the age of 60 years.

35. In Chairman, U.P. Jal Nigam vs. Radhey Shyam Gautam, 2007 (11) SCC 507, following the decision in Harwindra Kumar (supra) case, this Court held that the employees of the Nigam shall be entitled for full salary for the remaining period up to the age of 60 years.

36. However, in U.P. Jal Nigam vs. Jaswant Singh, 2006 (11) SCC 464 this Court allowed the benefits of arrears of salary only to those employees of the Nigam who had filed writ petitions and denied the same to others who have not moved before a court of law.

37. In view of the orders passed by this Court in Harwindra Kumar(supra), Radhey Shyam Gautam(supra) and Jaswant Singh(supra), it was not open to the High Court to rely on some other decision of this Court, ratio of which is not applicable in the present case for determining back wages of respondents restricting it to be 20% of

the basic salary. We observe that the principle of 'no pay no work' is not applicable to the employees who were guided by specific rules like Leave Rules etc. relating to absence from duty. Such principle can be applied to only those employees who were not guided by any specific rule relating to absence from duty. If an employee is prevented by the employer from performing his duties, the employee cannot be blamed for having not worked, and the principle of 'no pay no work' shall not be applicable to such employee.

38. In these cases as we have already held that Regulation 31 shall be applicable and the age of superannuation of employees of the Nigam shall be 60 years; we are of the view that following consequential and pecuniary benefits should be allowed to different sets of employees who were ordered to retire at the age of 58 years:

(a) The employees including respondents who moved before a court of law irrespective of fact whether interim order was passed in their favour or not, shall be entitled for full salary up to the age of 60 years. The arrears of salary shall be paid to them after adjusting the amount if any paid.

(b) The employees, who never moved before any court of law and had to retire on attaining the age of superannuation, they shall not be entitled for arrears of salary. However, in view of Regulation 31 they will deem to have continued in service up to the age of 60 years. In their case, the appellants shall treat the age of superannuation at 60 years, fix the pay accordingly and re-fix the retirement benefits like pension, gratuity etc. On such calculation, they shall be entitled for arrears of retirement benefits after adjusting the amount already paid.

(c) The arrears of salary and arrears of retirement benefits should be paid to such employees within four months from the date of receipt of copy of this judgment.

39. The judgment passed by the Division Bench of the Allahabad High Court, Lucknow Bench dated 29th July, 2010 and other impugned judgments stand modified to the extent above. The appeals are disposed of with aforesaid observation and directions. There shall be no order as to costs.