IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No.411 of 2012 alongwith LPAs No.412 & 413 of 2012.

Judgment reserved on : 07.07.2015.

Date of decision: July 22,2015.

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1. LPA No.411 of 2012.

Regional Provident Fund Commissioner Employee's Provident Fund Organization .....Appellant.

Versus

R.C. Gupta and others .....Respondents.

2. LPA No.412 of 2012.

Regional Provident Fund Commissioner Employee's Provident Fund Organization .....Appellant.

Versus

HPTDC Employees Union and others. .....Respondents.

3. LPA No.413 of 2012.

Regional Provident Fund Commissioner Employee's Provident Fund Organization ....Appellant.

Versus

Himachal Pradesh Paryatan Vikas Nigam Karmchari Sangh and others .....Respondents.

Coram

The Hon'ble Mr. Justice Mansoor Ahmad Mir, Chief Justice.

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting?[1] Yes

For the Appellant(s) : Mr.Navlesh Verma, Advocate, in all the appeals.

For the Respondents : Mr.Subhash Sharma, Advocate, for respondents No.1 to 6 in LPA No.411 of 2012 and for respondents No.1 and 2 in LPAs No.412 and 413 of 2012.

Mr.Ashok Sharma, Assistant Solicitor General of India with Mr.Angrej Kapoor,

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[1] Whether the reporters of the local papers may be allowed to see the Judgment?

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High Court of H.P.

Advocate, for respondents No.7 and 8 in LPA No.411 of 2012 and for respondents No.3 and 4 in LPAs No.412 and 413 of 2012.

Mr.Shivank Singh Panta, Advocate, for respondent No.9 in LPA No.411 of 2012 and for respondent No.5 in LPAs No.412 and 413 of 2012.

Tarlok Singh Chauhan, Judge.

Since common question of law and facts arises for determination, therefore, all these appeals are taken up together for disposal.

2. The writ petitioners, who are the respondents herein, filed petitions before this Court on the ground that they have illegally been denied pensionable rights under the Employees' Pension Scheme, 1995, which scheme had subsequently been amended vide amendment dated 28.02.1996.

3. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 was made applicable to the HPTDC Corporation w.e.f. 1st September, 1974 which covered all the employees of the Corporation under the Employees' Pension Scheme, 1995. Insofar as the Employees Provident Fund is concerned, it provided for a system of provident fund compulsorily on contribution basis by the Employer and employees jointly. The rate of contribution as on 16.11.1995 was 10% of salary, which was raised to 12% in the year 1997. The Employer who has been arrayed as respondent No.9 was contributing the employers' share at the rate on total salary which constituted of not only the basic pay but even the dearness allowance w.e.f. 16.11.1995. Equal contribution was also made from the salary of the writ petitioners as employees' share.

High Court of H.P.

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4. The aforesaid Act came to be amended vide Act No.25 of 1996 by making provisions for pension after the retirement of employees covered under the Act. The amendment was constituted in terms of Section 6-A and 6-B of the Principal Act authorizing the Central Government to frame Employees' Pension Scheme for providing superannuation or retiring pension etc.

5. Vide notification dated 16.11.1995, the Central Government notified the Employees' Pension Scheme, 1995 and vide Sub-para 3 of Para-7 of the scheme all the employees were required to exercise their options to join the scheme within a period of six months from 16.11.1995 i.e. upto 15.05.1996. However, before the expiry of the aforesaid option period, the Employees' Pension Scheme was amended w.e.f. 16th March, 1996 vide GSR No.748 (E) dated 16.11.1995. The condition to exercise the option within six months as had been notified in the original scheme was done away and that apart certain other amendments were also carried out.

6. In the scheme that was originally notified on 16.11.1995, the wage ceiling was ` 5,000/- for determining the pensionable salary and the same was raised to ` 6,500/- per month w.e.f.01.06.2001. The original scheme of 1995 envisaged two kinds of pension patterns which are as follows:-

a) One based on the wage ceiling of ` 6,500/- per month; and

b) Another based on the higher salary exceeding the wage limit of ` 6,500/- per month for which the contribution of higher salary exceeding the wage ceiling were to be made in the pension fund on 16.11.1995.

High Court of H.P.

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It is not in dispute that the amended scheme guaranteed the pension benefits to the employees already covered under the original scheme.

7. The basis of claim of the writ petitioners was that insofar as the original scheme is concerned, the same was given wide publicity and was circulated by the Provident Fund Organization, but when the amendment was carried out in the original scheme, it was neither published nor the writ petitioners were aware of it.

8. After learning about the amended scheme, representation was made by the 9th respondent to the appellants, but the same was rejected vide letter dated 10th January, 2006 which reads thus:-

"EMPLOYEES' PROVIDENT FUND ORGANIZATION

Regional Office:

Block No.34, I & II Floor, SDA Complex, Kasumpti, Shimla-9 (H.P.)

No.Pension Cell/Ro/HP/HPTDC/EPS-95-16360 Dated: 10 JAN 2006.

To

The Managing Director
Himachal Pradesh Tourism Dev. Corp. Ltd.
Ritz Annexe, Shimla- 171001.

Sub:- Implementation of the Employees' Pension Scheme 1995 regarding.

Sir,

This is with reference to your letter No.ACCtts./67-10/82-TDC dated 22.03.2005 regarding to contribute the pension contribution on higher rate from retrospective date.

In this connection, the matter was referred to Head Office and it has been clarified that Employer and Employee can exercise option to contribute on salary exceeding the wage ceiling on two occasion:-

1. Immediately on and from the date of commencement of the scheme, i.e. 16.11.1995.

2. Immediately on and from the date the salary exceed the statutory limit (` 6500/- at present.)

From the above provisions, it is clear that the establishment is required to remit the contribution on the salary

High Court of H.P.

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over and above the statutory from the month in which the salary crossed that limit and not from any later date. Since your establishment wants to contribute on higher wages at present which is not within the provisions of EPS' 95, hence the permission to contribute on higher wages is hereby rejected.

Yours faithfully,
Sd/-10/1/06
(J.R. Sharma)
Regional P.F. Commissioner/H/OIC."

9. It was also contended that 9th respondent on the basis of original scheme, 1995 deposited 8.33% subject to wage limit of `6,500/- (which was `5,000/- upto 30.04.2001) out of total 12% of Employer's share into the "Pension Fund Account" and remaining 3.67% was remitted in the "Provident Fund" of the concerned employees. Therefore, consequent to the amendment in the scheme, 8.33% on full salary beyond the wage limit of `6,500/- should have been deposited in the "Pension Fund Account" and balance in the "Provident Fund Account" of the employees. It was further contended that the 9th respondent had been contributing on full salary exceeding the wage ceiling i.e. `6,500/- from the very commencement of the Employees' Pension Scheme that was floated in the year 1995. But, since the amendment remained un-noticed for no fault of the writ petitioners, they got no opportunity to switch over to the amended scheme which resulted in 8.33% of the employees' contribution remitted in the pension fund being limited to the wage salary, whereas, the only procedural requirement was the bifurcation of the already deposited amount under the appropriate heads of accounts of "Pension Fund Account" and "Employees Provident Fund Account" which should have been done by the respondents.

10. It was thereafter contended that 9th respondent vide letter dated 22nd March, 2005 had represented to the appellants and informed it

High Court of H.P.

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that the Employer had been contributing its share at the rate of 12% of the basic pay plus ADA. The amount so remitted in the "Employees' Pension Fund" under the "Employees' Pension Scheme, 1995" was 8.33% of the employees' share limited to `5,000/- per month of pensionable salary which limit was later increased to `6,500/- per month w.e.f. 01.06.2001. The net result of this was that the employees, who had retired were given pension by taking the limit of pensionable salary of `6,500/-. But, had the remittance in the Employees' Pension Fund at the rate of 8.33% been made without the limit of `6,500/- out of 12% of the Employer's share, the retirees would have got much higher pension based upon the average of basic pay plus ADA drawn by them during the preceding 12 months of their retirement.

11. On the basis of the aforesaid pleadings, the writ petitioners claimed various reliefs. However, at the time of final hearing, the writ petitioners did not press the entire reliefs and restricted the prayer only to the relief that the already deposited amount of employees' share of contribution under the appropriate heads of accounts of "Pension Fund Account" and "Provident Fund Account" beyond the wage limit from the date of enforcement of the Employees' Pension Scheme, 1995, i.e. 16.11.1995 as per the amendment dated 28.02.1996 of the said scheme be got recalculated and readjusted from the appellants and proforma respondents.

12. The appellants contested the petition by filing reply wherein it had been averred that the writ petition was not competent and maintainable as the appellants were required to act within the fourcorners of the Act and the Scheme, and whereas the writ petitioners were

High Court of H.P.

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seeking a relief which was contrary to both the Act and the Scheme and, therefore, the petition deserved to be dismissed.

13. On the other hand, the Employer filed its reply supporting the claim of the writ petitioners and it was submitted that the amendment dated 28.02.1996 to the Employees' Pension Scheme, 1995 remained unnoticed by it and even the Employees' Provident Organization, who had been administering the scheme had also not invited the revised options for contribution on full salary beyond the wage limit from the employees through the Employer Corporation consequent to the said amendment. However, subsequently when it was brought to the notice of the Employer, the matter was taken up with the Employees Provident Organization for allowing the contribution on the full salary beyond the wage limit out of the Employer's share which had already been deposited from the very inception of the scheme i.e. 16.11.1995 and required only the bifurcation of proportionate amounts under the proper heads of accounts of Provident Fund and Pension Fund for which the Employer was ready and willing in the best interest of its employees as had already been consented vide letter dated 22.03.2005.

14. The learned writ Court concluded that the writ petitioners' right from the very inception had been contributing on the full salary at that time which fact was also admitted by the proforma respondent. But, the Employees Provident Organization, who was administering this scheme did not invite the revised options for contribution on full salary beyond the wage limit from the employees through their Employer-Corporation consequent to the amendment carried out in the scheme vide amendment dated 28.02.1996. However, subsequently when it was brought to the notice of the writ petitioners, they took up the matter with

High Court of H.P.

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the Employees' Provident Organization for allowing the contribution on the full salary beyond the wage limit which was deposited from the very inception of the scheme i.e. 16.11.1995.

15. After making these observations, the learned writ Court allowed the writ petitions by holding that no fault can be found with the writ petitioners because of the fault or inaction on the part of the appellants or any other instrumentality of the State because as soon as the Employer came to know about the amendment in the scheme, it deposited its share right from the inception of the scheme and it was observed:-

> "7…..Therefore, the lapse of the respondents would cost dearer to its employees covered under the benevolent legislation without any lapse on their part. Therefore, the respondents are hereby directed to re-calculate and re-adjust the already deposited amount of employers' share contribution under the appropriate Head of Accounts of 'Pension Fund Account' and Provident Fund Account' from the wage limit from the date of enforcement of the Pension Scheme in the year 1995, as per the subsequent amendment carried out in the year 1996 (Annexure P-2 referred above). However, it is made clear that these directions are only for the benefits of the petitioners in the above mentioned petition in peculiar facts and circumstances and shall not be treated as a precedent."

16. The appellants have taken exception and questioned these findings on the ground that once the writ petitioners have failed to make remittances through their Employer on the higher wages being drawn by them, they could not be allowed to retrospectively contribute on the higher wage in order to increase the payable pension amount. It is further argued that it was only the employees, who had contributed as per the 1995 scheme, who alone could be permitted the benefit of the said scheme and the benefit could not be extended to the employees, who

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High Court of H.P.

had not opted or contributed under this scheme. It is also argued that the writ petitioners could not have filed the writ petitions by pleading ignorance of law.

17. On the other hand, Shri Subhash Sharma, learned counsel for the respondents has vehemently argued that no fault can be found with the judgment rendered by the learned writ Court as the same is just, legal and equitable and it is the appellants, who have drawn cut-off date only to deny the writ petitioners their due.

We have heard the learned counsel for the parties and have gone through the records of the case.

18. From the perusal of the pleadings of the writ petitions, the first and foremost question which, according to us, was required to be determined by the learned writ Court was as to whether the writ petitioners could plead and base their entire claim on ignorance of the scheme of 1996.

19. The Employees' Provident Funds and Miscellaneous Provisions (Amendment) Act, 1996 came into force on 16th November, 1995 and certain changes in the Employees Provident Funds and Miscellaneous Act, 1952 were brought about. Section 6A provided for Employees' Pension Scheme and reads thus:-

> "6A. Employees' pension Scheme. (1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Pension Scheme for the purpose of providing for-
>
> (a) superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies; and
>
> (b) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees.
>
> (2) Notwithstanding anything contained in section 6, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from

High Court of H.P.

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time to time, in respect of every employee who is a member of the Pension Scheme,-

(a) such sums from the employer's contribution under section 6, not exceeding eight and one- third per cent, of the basic wages, dearness allowance and retaining allowance, it any, of the concerned employees, as may be specified in the Pension Scheme;
(b) such sums as are payable by the employers of exempted establishments under sub- section (6) of section 17;

(c) the net assets of the Employees' Family Pension Fund as on the date of the establishment of the Pension Fund;

(d) such sums as the Central Government may, after due appropriation by Parliament by law in this behalf, specify.

(3) On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits they were entitled to under the ceased scheme from the Pension Fund.

(4) The Pension Fund shall vest in and be administered by the Central Board in such manner as may be specified in the Pension Scheme.

(5) Subject to the provisions of this Act, the Pension Scheme may provide for all or any of the matters specified in Schedule III.

(6) The Pension Scheme may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that benefit in that scheme.

(7) A Pension Scheme, framed under sub-section (1), shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme or both Houses agree that the scheme should not be made, the scheme shall thereafter have effect only in such modified form or be no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that scheme."

20. It was pursuant to the provisions of Section 6A of the Amendment Act, 1996 that the Employees' Pension Scheme, 1995 was

High Court of H.P.

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introduced and published in the gazette of India on 16th November, 1995. It is not in dispute that this scheme was amended w.e.f. 16th March, 1996 vide GSR (General Statutory Rules) No.134 dated 28.02.1996 w.e.f. 16.03.1996.

21. In this background, the question then arises as to what would be the effect of the publication of the scheme by way of notification in the official gazette. This question need not detain us any longer in view of three Judges Bench decision of the Hon'ble Supreme Court in ***Union of India and others*** *versus* ***Ganesh Das Bhoj Raj (2000) 9 SCC 461,*** wherein the Hon'ble Supreme Court held that it was an established practice that the publication in the official gazette was an ordinary method of bringing a rule or subordinate legislation to the notice of the people concerned and individual service of a general notification on every member of the public was not required and the interested person could acquaint himself with the contents of the notification published in the gazette. This was the usual method followed since years and there was no other mode prescribed and, therefore, the notification would come into operation as soon as it is published in the gazette. It is apt to reproduce the following observations:-

> "11. In our view, as noted above, in Pankaj Jain Agencies versus Union of India (1994) 5 SCC 198 the Court directly dealt with a similar contention and after relying upon the decision in the case of State of Maharashtra versus Mayer Hans George AIR 1965 SC 722 rejected the same. That decision is followed in I.T.C. Ltd. versus CCE (1996) 5 SCC 538 and other matters. Hence, it is difficult to agree that the decision in Pankaj Jain Agencies case was not helpful in deciding the question dealt with by the Court. Section 25 of the Customs Act empowers the Central Government to exempt either absolutely or subject to such conditions, from the whole or any part of the duty of

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customs leviable thereon by a notification in Official Gazette. The said notification can be modified or cancelled. The method and mode provided for grant of exemption or withdrawal of exemption is issuance of notification in the Official Gazette. For bringing Notification into operation, the only requirement of the section is its publication in the Official Gazette and no further publication is contemplated. Additional requirement is that under Section 159 such notification is required to be laid before each House of Parliament for a period of thirty days as prescribed therein. Hence, in our view Mayer Hans George (supra) which is followed in the Pankaj Jain Agencies case represents the correct exposition of law and the Notification under Section 25 of the Customs Act would come into operation as soon as it is published in the Gazette of India i.e. the date of publication of the Gazette. Apart from prescribed requirement under Section 25, usual mode of bringing into operation such notification followed since years in this country is its publication in the Official Gazette and there is no reason to depart from the same by laying down additional requirement.

12. In the case of Mayer Hans George, it was contended that the notification under Section 8 of the Foreign Exchange Regulation Act, 1947 of the Reserve Bank of India could not be deemed to have been in force and operation merely from the date of issue or publication in Gazette. It would have effect only from the date on which the person against whom it is sought to be enforced had knowledge of its making. A contention was raised as regards the precise point of time when a piece of delegated legislation like exemption notification by the Reserve Bank would in law take effect. In support of that contention reliance was placed on the decision of Privy Council in Lim Chin Aik v. R.1963 AC 160. The Court negatived the said contention by holding that in the first place the order of Minister dealt with by the Privy Council was never published since admittedly it was transmitted to the Immigration official who kept it with himself. The Court observed:-

> "But in the case on hand, the notification by the Reserve Bank varying the scope of the exemption, was admittedly 'published' in the Official Gazette-- the usual mode of

High Court of H.P.

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> publication in India, and it was so published long before the respondent landed in Bombay. The question, therefore, is not whether it was published or not, for in truth it was published, but whether it is necessary that the publication should be proved to have been brought to the knowledge of the accused…. Lastly, the order made by the Minister in the Singapore case, was one with respect to a single individual, not a general order, whereas what we have before us is a general rule applicable to every person who passes through India. In the first case, it would be reasonable to expect that the proper method of acquainting a person with an order which he is directed to obey is to serve it on him, or so publish it that he would certainly know of it, but there would be no question of individual service of a general notification on every member of the public, and all that the subordinate law-making body can or need do, would be to publish it in such a manner that persons can, if they are interested, acquaint themselves with its contents."

13. The Court further referred to the judgment of Bailhache J. in Johnson V. Sargant & Sons (1918) 1 KB 101 and did not approve the observation made therein to the effect that the order was not known until the morning of May 17 but it came into operation before it was made known. On the contrary, Court held that there was great force in learned authors (Prof. C.K. Allen) following comment on reasoning in Sargant case:

> "This was a bold example of judge-made law. There was no precedent for it, and indeed a decision, Jones v. Robson (1901) 1 KB 673 which, though not on all fours, militated strongly against the judges conclusion, was not cited; nor did the judge attempt to define how and when delegated legislation became known. Both arguments and judgment are very brief. The decision has always been regarded as very doubtful, but it never came under review by a higher court."

The Court also held that:

> "It is obvious that for an Indian law to operate and be effective in the territory where it operates viz., the territory of India it is not necessary that it should either be published or be made known outside the country. Even if, therefore, the view enunciated by Bailhache, J. is taken to be correct, it would be

High Court of H.P.

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> apparent that the test to find out effective publication would be publication in India, not outside India so as to bring it to the notice of everyone who intends to pass through India. It was published and made known in India by publication in the Gazette on the 24th November and the ignorance of it by the respondent who is a foreigner is, in our opinion, wholly irrelevant."

The Court further observed: -

> " [B]ut where there is no statutory requirement we conceive the rule to be that it is necessary that it should be published in the usual form i.e., by publication within the country in such media as generally adopted to notify to all the persons concerned in the making of rules. In most of the Indian statutes, including the Act now under consideration, there is provision for the rules made being published in the Official Gazette. It therefore stands to reason that publication in the Official Gazette viz., the Gazette of India is the ordinary method of bringing a rule or subordinate legislation to the notice of the persons concerned."

14. From the aforesaid judgment it can be stated that it is established practice that the publication in the official gazette, that is, Gazette of India is ordinary method of bringing a rule or subordinate legislation to the notice of the persons concerned. Individual service of a general notification on every member of the public is not required and the interested person can acquaint himself with the contents of the notification published in the gazette. It is the usual mode followed since years and there is no other mode prescribed under the present statute except by the amendment in the year 1998 by Bill 21 of 1998."

22. A similar issue came up before this Court in a batch of appeals, the lead whereof was ***LPA No.89 of 2012***, titled ***Sainik Schools Society and anr.*** *versus* ***R.C.Sharma***, decided on 17th June, 2014, where the teachers of the Sainik School had approached this Court and claimed that they were though entitled to pension under the CPF Scheme w.e.f. 01.04.1988, however, being unaware of the scheme, they could not apply within the stipulated time. This Court held that there was

High Court of H.P.

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no requirement of the scheme that the school was under any obligation calling upon them (petitioners therein) for exercising their options under the scheme. This Court observed as under:-

> "**22.** Once it is not disputed that the writ petitioners were in service at the time when the relevant SRO had been issued then there was no requirement of the scheme that the school would be required to give individual notices to the writ petitioners for exercising their option for the pension scheme and also for asking the writ petitioners to refund the employees contribution of CPF at that stage. Moreover, when the notice or knowledge of the pension scheme can be reasonably inferred or gathered from the conduct of the writ petitioners in the ordinary course of business and from surrounding circumstances, then it would constitute sufficient notice in the eyes of law. Reliance in this behalf can conveniently be placed upon the judgment of the Hon'ble Supreme Court in ***Pepsu Road Transport Corporation, Patiala vs. Mangal Singh and Others (2011) 11 SCC 702*** wherein it has been held as follows:
>
> > *"52. The respondents in all these appeals, before us, have made a claim for pensionary benefits under the Pension Scheme for the first time only after their retirement with an unreasonable delay of more than 8 years. It is not in dispute, in some appeals, that the respondents never opted for the Pension Scheme for their alleged want of knowledge for non-service of individual notices. In other appeals, although respondents applied for the option of the Pension Scheme but indisputably never fulfilled the quintessential conditions envisaged by the Regulations which are statutory in nature.*
> >
> > *53. The learned counsel for the respondents in support of their contention for want of knowledge of the Pension Scheme due to non-service of individual notices relied on the decision of this Court in Dakshin Haryana Bijli Vitran Nigam v. Bachan Singh, (2009) 14 SCC 793. The said decision is clearly distinguishable on facts. In that case, the appellant, Haryana State Electricity Board, had issued instructions dated 23.06.1993 and circular dated 09.08.1994 in order to provide an option to the employees for pensionary benefits in lieu of their work charged service with an express condition of noting of instructions from all the employees and acknowledging the receipt of the letter. In these appeals,*

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before us, there is no such condition of noting from the employees or serving individual notices in the Pension Scheme or Regulations. Therefore, in our opinion, Bachan Singh's decision will not assist the respondents.

54. In our view, in the facts and circumstances of the present case and in view of absence of such condition in the scheme, it is not necessary for the Corporation to give an individual notice to respondents for exercising of option for pension Scheme and also for asking respondent to refund the employers contribution of C.P.F. at each stage. Furthermore, when notice or knowledge of the Pension Scheme can be reasonably inferred or gathered from the conduct of the respondents in their ordinary course of business and from surrounding circumstances, then, it will constitute a sufficient notice in the eyes of law.

55. In Union of India v. M.K. Sarkar, (2010) 2 SCC 59, this Court has held: (SCC p.68, paras 21-23)

> *"21. The Tribunal in this case has assumed that being "aware" of the scheme was not sufficient notice to a retiree to exercise the option and individual written communication was mandatory. The Tribunal was of the view that as the Railways remained unrepresented and failed to prove by positive evidence, that the respondent was informed of the availability of the option, it should be assumed that there was non-compliance with the requirements relating to notice. The High Court has impliedly accepted and affirmed this view. The assumption is not sound.*
>
> *22. The Tribunal was examining the issue with reference to a case where there was a delay of 22 years. A person, who is aware of the availability of option, cannot contend that he was not served a written notice of the availability of the option after 22 years. In such a case, even if Railway Administration was represented, it was not reasonable to expect the department to maintain the records of such intimation(s) of individual notice to each employee after 22 years. In fact by the time the matter was considered more than nearly 27 years had elapsed. Further when notice or knowledge of the availability of the option was*

High Court of H.P.

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clearly inferable, the employee cannot after a long time (in this case 22 years) be heard to contend that in the absence of written intimation of the option, he is still entitled to exercise the option.

23. This Court considered the meaning of "notice" in Nilkantha Sidramappa Ningashetti v. Kashinath Somanna Ningashetti, AIR 1962 SC 666. This Court held: (AIR p. 669, para 10)

"10. We see no ground to construe the expression `date of service of notice' in Column 3 of Article 158 of the Limitation Act to mean only a notice in writing served in a formal manner. When the legislature used the word `notice' it must be presumed to have borne in mind that it means not only a formal intimation but also an informal one. Similarly, it must be deemed to have in mind the fact that service of a notice would include constructive or informal notice. If its intention were to exclude the latter sense of the words `notice' and `service' it would have said so explicitly."

56. Regulation 4 (iii) of the Regulations is a deeming provision to the effect: firstly, if an employee fails to exercise his option within a period of 6 months from the date of issue of these Regulations and; secondly, even on exercise of option, if an employee fails to refund the amount of advance taken from employers contribution of the C.P.F. within 6 months from the date of issue of these Regulations, then it shall be deemed that employee has opted to continue for the existing C.P.F. benefit. Therefore, the failure on the part of the respondents to opt for the Pension Scheme and refund the advance taken from the employer's contribution of C.P.F. will disentitle them from claiming any benefit under the Pension Scheme. Therefore, we cannot sustain the Judgment and order passed by the High Court."

23. It was further held that it cannot be laid down as a general rule that each and every circular/instruction issued by the Employer giving additional monetary benefits to the retired employees must be published in newspaper and that in the absence of such publication or

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personal communication to the retired employee would entitle him to seek intervention of the Court after lapse of many years.

24. In view of the aforesaid exposition of law, it can safely be concluded that once the notification is published in the official gazette, then the same is a notice to all the persons concerned and, therefore, there is no further requirement of individual service of a general notification on every member of the public and interested person(s) can acquaint himself with the contents of the notification published in the gazette.

25. Therefore, we have no hesitation in concluding that the petitions filed by the writ petitioners were itself not maintainable as the same were entirely based on the plea of ignorance of the scheme 1996 which admittedly had been published in the gazette in accordance with law. We further conclude that once the notification had been published in the official gazette there was no further requirement of individual service of a general notification on the writ petitioners.

26. The learned counsel for the writ petitioners would, however, argue that the cut-off date of the amended scheme was itself ultravires and reliance in this behalf has been placed upon the judgment of the Division Bench of the Kerala High Court in ***The Union of India and another*** *versus* ***A.K.Jayappan and others***, decided on 05.03.2013, whereby the Division Bench upheld the findings of the learned writ Court and held that proviso to Clause 11(3) of the scheme that had been added by GSR No.134 dated 28.02.1996 with effect from 16.03.1996 was only prospective in nature. It was further pointed out by the learned counsel for the respondents that the aforesaid judgment is now pending consideration before the Hon'ble Supreme Court.

High Court of H.P.

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27. Indisputably, the writ petitioners have not challenged the cut-off date, therefore, the question arises as to whether the writ petitioners can derive any benefit on the basis of the aforesaid judgment without there being any specific pleading or relief sought in this behalf in the petition.

28. It is more than settled that the Court cannot travel beyond the pleadings and relief sought. This view of ours is fortified by the judgment of the Hon'ble Supreme Court in ***State of J.&K. & Anr.*** *versus* ***Ajay Dogra AIR 2011 SC 1830***. It is apt to reproduce paras 14, 15, 16, 22 and 23 of the judgment herein:-

> *"14. A perusal of the writ petitions would prove and establish that the only prayer made in those writ petitions was to grant relaxation to the criteria and standard of physical conditions prescribed for and required to be fulfilled. In aforesaid writ petitions, neither the validity of Rule 176 with regard to physical conditions were challenged nor such conditions prescribed in the advertisement were challenged on the ground of its validity contending inter alia that there is no nexus of the said conditions with the object sought to be achieved. We find that the physical conditions prescribed in the advertisement are in consonance with Rule 176 of the Police Rules which are statutory Rules. No where in the pleadings, it is stated that such conditions prescribed are illegal or invalid. Constitutional validity of the aforesaid Rule was never challenged in any of the writ petitions.*
>
> *15. The High Court, however, without there being any pleading in that regard went beyond the pleadings and held that such physical conditions laid down are bad and arbitrary as what has been prescribed have no nexus with the object sought to be achieved.*
>
> *16. The aforesaid decision rendered by the High Court is contrary to and inconsistent with the law laid down by this Court in the case of V.K. Majotra v. Union of India & Ors., reported in (2003) 8 SCC 40 : (AIR 2003 SC 3909 : 2003 AIR SCW 4504). In the said decision also what was urged before this Court was neither raised in the pleadings nor it was urged before the High Court by any of the parties to the writ petition. In the said case, the issue was as to whether a person not having judicial experience could be appointed as Vice Chairman of the Central Administrative Tribunal. This Court found that the aforesaid issue was not raised in the writ petition and similarly, vires of the section*

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was also not challenged. This Court in the aforesaid context, held as follows:-

> *8. ....It is also correct that vires of Sections 6(2)(b), (bb) and (c) of the Act were not challenged in the writ petition. The effect of the direction issued by the High Court that henceforth the appointment to the post of Vice Chairman be made only from amongst the sitting or retired High Court judge or an advocate qualified to be appointed as a judge of the High Court would be that Sections 6(2)(b), (bb) and (c) of the Act providing for recruitment to the post of Vice Chairman from amongst the administrative services have been put to naught/obliterated from the statute book without striking them down as no appointment from amongst the categories mentioned in clauses (b), (bb) and (c) could now be made. So long as Sections 6(2)(b), (bb) and (c) remain on the statute book such a direction could not be issued by the High Court.........."*

In paragraph 9 of the said decision, this Court has discussed the issues in the following terms:-

> *"9. We are also in agreement with the submissions made by the counsel for the appellants that the High Court exceeded its jurisdiction in issuing further directions to the Secretary, Law Department, Union of India, the Secretary, Personnel and Appointment Department, Union of India, the Cabinet Secretary of the Union of India and to the Chief Secretary of the U.P. Government as also to the Chairman of CAT and other appropriate authorities that henceforth the appointment to the post of presiding officer of various other Tribunals such as CEGAT, Board of Revenue, Income Tax Appellate Tribunal etc. should be from amongst the judicial members alone. Such a finding could not be recorded without appropriate pleadings and notifying the concerned and affected parties."*

17 to 21. ....

22. In our considered opinion, the ratio of the aforesaid decisions of this Court are squarely applicable to the facts of the present case. There was no challenge to the constitutional validity of Rule 176 of the Police Rules so far as it relates to prescribing physical conditions regarding the height and the chest. The stipulations in the advertisement regarding standard of physical condition was also not challenged in the Writ Petition. The High Court was not justified in going into the validity of the aforesaid criterion in absence of any such challenge. The High Court also has not specifically declared the Rule prescribing minimum height standard and chest standard ultra vires and, therefore, so long as that

High Court of H.P.

::: Downloaded on - 17/10/2022 18:48:25 :::CIS

> *Rule exists in the statute book, no such direction as issued by the High Court could be issued. Consequently, the directions issued by the High Court in the present case are required to be set aside.*
>
> *23. We, therefore, hold that the High Court was not justified to decide the validity of the aforesaid Rule and the advertisement without there being any challenge to the same. We also hold that it was not appropriate for the High Court to set aside the said conditions which are mandatory in nature."*

29. The Hon'ble Supreme Court in ***Bachhaj Nahar*** *versus* ***Nilima Mandal & Ors. AIR 2009 SC 1103*** held that the Court cannot make out a case not pleaded and grant relief not sought for. It is apt to reproduce para 12 of the judgment herein:-

> *"12. It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contains the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate, this should be only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise. The principles laid down in Bhagwati Prasad and Ram Sarup Gupta (supra) referred to above and several other decisions of this Court following the same cannot be construed as diluting the well settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded. Another aspect to be noticed, is that the court can consider such a case not specifically pleaded, only when one of the parties raises the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties proceeded on that basis and had led evidence on that case. Where neither party puts forth such a contention, the court cannot obviously make out such a case not pleaded, suo motu."*

30. The aforesaid being the settled position of law, it can safely be concluded that this Court cannot travel beyond the pleadings and

High Court of H.P.

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relief and cannot therefore grant relief which has neither been pleaded nor claimed in the writ petitions.

31. Having observed so, we find merit in these appeals and the same are accordingly allowed and the judgment passed by the learned writ Court is set aside, leaving the parties to bear their own costs. Pending application (s), also stand disposed of. The Registry is directed to place a copy of this judgment on the files of connected matters.

(Mansoor Ahmad Mir),
Chief Justice.

Tarlok Singh Chauhan),
Judge.

July 22, 2015.
(krt)

High Court of H.P.

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