

**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 1791/2024

RFC Retired Officers And Employees Association, through its President Shri Govind Singh S/o Late Shri B.R. Singh 630, Barkat Nagar, Tonk Phatak, Jaipur.

----Petitioner

Versus

1. State of Rajasthan through Additional Chief Secretary, Department of Industries, Government of Rajasthan, Government Secretariat, Jaipur.
2. The Chairman, Rajasthan Financial Corporation, Udyog Bhawan Tilak Marg, Jaipur.
3. The Managing Director, Rajasthan Financial Corporation, Udhog Bhawan, Tilak Marg, Jaipur.
4. The Small Industries Development Bank of India, Swavalamban Bhawan, C-11 G-Block, Bandra-Kurla Complex Bandra, Mumbai 400051 Through Its General Manager.

----Respondents

Connected With

D.B. Civil Writ Petition No. 18016/2023

Roor Mal Aswal S/o Late Shri M.R. Aswal, Aged About 69 Years, Resident of A/347, Vaishali Nagar, Jaipur (Raj.)

----Petitioner

Versus

1. State of Rajasthan through its Principal Secretary, Industries Department, Government of Rajasthan, Government Secretariat, Jaipur.
2. The Managing Director, Rajasthan Financial Corporation, Udhog Bhawan, Tilak Marg, Jaipur.

----Respondents

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For Petitioner(s)	:	Mr. Sandeep Saxena Mr. Ashwinee Kumar Jaiman Mr. Dharam Veer Jashmani
For Respondent(s)	:	Mr. B.S. Chhaba, AAG with Mr. Rahul Gupta, AAAG, Mr. Hardik Singh, AAAG Mr. Satyam Bhardwaj, Mr. Virendra Lodha, Sr. Adv. with Mr. Ankit Rathore Mr. Ramdhan, Asst. G.C. and Ms. Shruti Pareek, Asst. G.C.

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**HON'BLE MR. JUSTICE INDERJEET SINGH**  
**HON'BLE MR. JUSTICE RAVI CHIRANIA**  
**Judgment**

1.	Date of conclusion of Arguments	19.01.2026
2.	Date on which the judgment was reserved	19.01.2026
3.	Whether the full judgment or only operative part is pronounced	Full
4.	Date of pronouncement	19.02.2026

**REPORTABLE**

**Per Hon'ble Ravi Chirania, J.**

1. By this common Order, this Court is deciding the two connected writ petitions, D.B. Civil Writ Petition No.1719/2024 titled as RFC Retired Officers and Employees Association and Ors. Vs. State of Rajasthan and Ors., and D.B. Civil Writ Petition No.18016/2023, titled as Roor Mal Aswal vs. State of Rajasthan & Anr.

2. The issue involved in both the writ petitions is common, therefore, the facts are also common and the petitioners are aggrieved by the same controversy related to the issue of withdrawal of Pension Regulations in respect of Officers and Employees of the Rajasthan Financial Corporation.

3. For deciding the controversy, the facts of D.B. Civil Writ Petition No.18016/2023 are taken as lead case to decide the issue as involved.

4. The brief facts, as pointed out and noted from the pleadings of the case and as argued by learned counsel for the petitioner, Mr. Ashwinee Kumar Jaiman, are that the petitioner-Roor Mal Aswal was appointed as a Deputy Manager in the Rajasthan Financial Corporation (hereinafter referred to as '**RFC**' for short) in the year 1980 and retired from service in the year 2014 on

attaining the age of superannuation. The respondent-RFC promulgated the Pension Regulations for its employees named as The Rajasthan Financial Corporation Employees' Pension Regulations, 1990 (hereinafter referred to as '**Pension Regulations of 1990**' for short), which were made effective from 01.04.1987.

5. The grievance of the petitioner, as raised in the prayer of the writ petition is that the respondent - RFC by the impugned notification dated 09.06.2020 (Annexure-1) notified the decision to withdraw the Pension Regulations of 1990 with retrospective effect from 21.06.2004 and declared that the employees would be entitled for the benefit of Contributory Provident Fund (CPF) Scheme under the Rajasthan Financial Corporation Employees' Provident Fund Regulations, 1958.

6. Learned counsel for the petitioner, Mr. Ashwinee Kumar Jaiman, submitted that the issue of entitlement of pension to the Officers and Employees of the respondent-RFC is into litigation since the year 2004. He further submitted that in the year 2004, the respondent-RFC issued an Office order dated 12.08.2004, whereby a decision was taken to withdraw the Pension Regulations of 1990. The said Office order dated 12.08.2004 was challenged before learned Single Judge of this Court by S.B. Civil Writ Petition No. 870/2005 However, the learned Single Judge dismissed the writ petition, against which special appeal was preferred before the Co-ordinate Bench of this Court. The Co-ordinate Bench examined the provisions of the Pension Regulations of 1990 in the light of Section 48 of the State Financial Corporation Act, 1951 (hereinafter referred to as '**Act of 1951**' for short). For deciding

the issue, the Co-ordinate Bench divided the Employees of RFC into three categories in the judgment dated 07.05.2018. The relevant paras of the judgment passed in D.B. Special Appeal Writ No.669/2017 titled as ***V.K. Gupta and Ors. Vs. State of Rajasthan and connected matters***<sup>1</sup> along with the connected appeals, are reproduced here as under:-

“The question now comes that if the order dated 12.8.2004 is set aside then what would be the consequence? The argument raised by learned counsel for the petitioners that Pension Regulations of 1990 would remain in force. We are in agreement with the learned counsel for the petitioners because if order dated 12.8.2004 goes, the Pension Regulations of 1990 survive till its withdrawal by applying the procedure given under Section 48 of the Act of 1951. A further question would be as to how the employees would be governed, if the order dated 12.8.2004 goes. We have to take into consideration three sets of employees and, accordingly, the issue aforesaid has to be dealt with. We categorise the employees and officers of the RFC In three categories, as follows:-

### **Category-I**

Those who retired prior to the order dated 12.8.2004 would be governed by the Pension unless the family or the retired employee opted for CPF Scheme. It may be under guidance or misguidance pursuant to the order dated 12.8.2004. It is more so when such an employee has accepted the benefits of CPF Scheme. Thus, so far as first category of the employees are concerned, those retired prior to 12.8.2004 would be governed by the Pension Scheme under the Regulations of 1990 unless accepted CPF Scheme with consequential benefits. It has otherwise been provided by the Corporation in the order dated 12.8.2004, thus even if the order aforesaid is Interfered, the outcome would remain the same.

### **Category-II**

The second category would be of those who retired after 12.8.2004 but opted for Pension Scheme (prior to

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1. D.B. Civil Writ Petition No.669/2017 dated 07.05.2018

retirement under the Pension Regulations of 1990. It is by an option or by compulsory application of the Pension Scheme as per Regulation 7 of the Regulations of 1990. Since the order dated 12.8.2004 goes, they would be governed by the Pension Regulations of 1990 unless they have opted for CPF Scheme. This would take care of set of employees who did not withdraw themselves from the Pension Scheme. The RFC has, however, extended the benefit of CPF and accordingly sent the cheques. If the amount was withdrawn by the retired employees without a protest or returning the cheque/amount with an objection before filing the writ petitions, they would not be entitled to pensionary benefits leaving those who returned the amount immediately on receipt in protest to govern them by the CPF Scheme. The direction aforesaid has been given in the light of the provisions of the Pension Regulations of 1990 itself which keeps even CPF Scheme alive.

It was not necessary for all the employees to govern themselves by the pensionary Scheme but could have retained themselves under the CPF Scheme though by giving option for it. Accordingly, while the Pension Regulations of 1990 survive, the CPF Scheme also remains alive. e. Accordingly, Accor the RFC is directed to extend pensionary benefits under the Pension Regulations of 1990 to those who retired after 12.8.2004 unless they opted for CPF Scheme or accepted the amount towards CPF without protest and accordingly it was not returned. It would be taken towards acceptance of CPF Scheme and, therefore, only writ petitions were filed after lapse of few years.

### **Category-III**

The third category of the petitions are those who are still in service. The question is as to whether they can be governed by the Pension Regulations of 1990. Since we have recorded finding that Pension Regulations of 1990 remain in effect In view of quashing of the order dated 12.8.2004, thus whoever has opted for the Pension Scheme, would continue unless the RFC withdraws or amend the Pension Regulations of 1990 by applying the procedure given under Section 48 of the Act of 1951. Thus, third set of employees would be governed accordingly if they have not opted for CPF Scheme. It is subject to the rider that the Pension

Regulations of 1990 are not withdrawn by applying the procedure given under Section 48 of the Act of 1951.

In view of the aforesaid, three categories of employees/officers would be governed by the directions and observation made above. The RFC is accordingly directed to make scrutiny of each case for extension of benefits, as are admissible in pursuance to the discussion, observation and directions given by this court in the paras above by dividing the officials in three categories. In view of the directions aforesaid, the order passed by learned Single Judge is interfered and is accordingly set aside. The parties would now be governed by the directions given in this judgment.

All the appeals are disposed of accordingly.”

7. Learned counsel further submitted that the **present petitioners fall in the II category** as mentioned in the judgment passed by the co-ordinate Bench in the case of **V.K. Gupta** (supra). More specifically, the petitioners are those persons, who retired after 12.08.2004, **however they opted for the pension scheme under the Pension Regulations of 1990 prior to their retirement from the services of the respondent RFC**. He further submitted that the judgment passed by the Co-ordinate Bench in the case of **V.K. Gupta** (supra) was challenged by the respondents-State Government as well as RFC before the Hon’ble Apex Court, but the Hon’ble Apex Court refused to interfere with the said judgment and dismissed the Special Leave Petitions.

8. Learned counsel further submitted that after failing to get any relief before the Hon’ble Supreme Court, the respondent-RFC filed a Review Petition No.190/2018 before the Co-ordinate Bench, seeking review of the order dated 07.05.2018. The Co-ordinate Bench after hearing learned counsel for the respective parties, disposed of the Review Petition vide order dated 15.11.2018.

9. By the said order dated 15.11.2018, **the Co-ordinate Bench refused to review its order in respect of Categories I and II as mentioned in the judgment dated 07.05.2018,** however, since the respondent-RFC had issued a notification dated 21.07.2017 after complying with the provisions of Section 48 of the Act of 1951 and was also under challenge before the learned Single Judge of this Court, therefore, **the Co-ordinate Bench reviewed its order dated 07.05.2018 only in respect of the Officers and Employees falling under III Category.** The relevant para of the judgment dated 15.11.2018, passed in review petition filed by the respondent-RFC, titled as ***RFC Officers Association & Anr. vs. State of Rajasthan & Anr.***<sup>2</sup>, as referred by the counsel for the petitioners, is reproduced here as under:-

“The third category is of those employees, who were in service. Since the order dated 12th August, 2004 was nullified by this court, the employees in service were ordered to be governed by the Regulations of 1990 unless it is withdrawn by applying the procedure given under Section 48 of the Act of 1951.

Learned counsel for RFC submits that a Notification for withdrawal of the Regulations of 1990 was issued subsequent to disposal of the writ petitions but during pendency of the special appeals. The Notification dated 21 July 2017 was issued after complying Section 48 of the Act of 1951. The reference of the said Notification has not been made in the judgment sought to be reviewed with necessary finding. It is moreso when withdrawal of the Regulations of 1990 vide Notification dated 21 July, 2017 has been made w.e.f. 12th August, 2004.

**We have considered the issue aforesaid but find no ground for review of the order even in reference to the Notification dated 21 July, 2017. This court, while dealing with the issue in reference to the employees falling in third**

<sup>2</sup> D.B. Writ Review No 190/2018 dated 15.11.2018

**category, made it clear to continue them under the Regulations of 1990 unless withdrawn by applying the procedure given under Section 48 of the Act of 1951.** In view of the above, we do not find any reason to review the order when it is clear in its terms. It is, otherwise, informed that the Notification dated 21 July, 2017 has been challenged by maintaining a separate writ petition. The issue in reference to the Notification would be determined in the said writ petition.

The review petition is disposed of with the aforesaid. It is, however, with the clarification that while dealing with the issues pertaining to employees falling in second category, the word "GPF" has been mentioned as "CPF" at some places due to typographical error. It has been corrected in a separate order passed today on the misc. application preferred by the employees. Accordingly, the order aforesaid would apply to the present order also."

10. Learned counsel further submitted that as the order was reviewed only to the extent of the III category of Officers and Employees and therefore, the issue in respect of petitioners herein, who belong to II category attained finality as the issue was no more *res integra* in terms of the judicial pronouncements of this Court, which has attained finality after the challenge failed before the Hon'ble Apex Court. He further submitted that even the Notification dated 21.07.2017, as issued in respect of III category of employees, challenged by *D.B. Civil Writ Petition No.4375/2018 titled as Sudeep Kumar Pokharna & Anr. vs. Rajasthan Financial Corporation & Anr.*<sup>3</sup>, decided by judgment/order dated 26.02.2020, was also quashed and set aside. The relevant para of the order/judgment dated 26.02.2020 is reproduced as under:-

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3. *D.B. Civil Writ Petition No.4375/2018 dated 26.02.2020*

“Thus, as per the above provision, the Board has power to make regulations. Admittedly, Pension Regulations of 1990 were formulated by complying with the procedure given under Section 48 of the Act, after consultations with SIDBI and with previous approval of the State Government. Thereafter notification was published. It was observed by the Division Bench while passing the order dated 07.05.2018 that to withdraw the Pension Regulations of 1990, procedure given under Section 48 of the Act had not been followed.

Review petition filed against the order or dated 07.05.2018 was dismissed vide order dated 15.11.2018. SLP filed by the Corporation was dismissed vide order dated 28.01.2019. Review petition against the said order was dismissed vide order dated 03.04.2019. Since the order dated 12.08.2004 passed in pursuance to resolution dated 21.06.2004 has been set aside, the Impugned notification issued in pursuance to the Board resolution dated 21.06.2004 is also liable to be set aside because the base of impugned notification has already been set aside.

Accordingly, writ petition is allowed. Impugned notification dated 21.07.2017 is quashed. However, the respondent-Corporation would be at liberty to proceed afresh in accordance with law.”

11. A perusal of the order dated 26.02.2020 shows that the co-ordinate Bench in the case of III category of employees **granted liberty to the respondent-RFC to proceed afresh process in accordance with law.**

12. He further submitted that even after the controversy in respect of employees of category I & II attained finality, surprisingly, the respondent - RFC misinterpreting and by misusing the liberty as granted by the Co-ordinate Bench of this Court in case of **Sudeep Kumar** (supra), granted vide order dated 26.02.2020, where the issue of only III category of employees was under challenge, issued the impugned notification dated

09.06.2020, by which the respondents have again ordered for withdrawal of the Pension Regulation of 1990 with effect from 21.06.2004 with retrospective for all the three categories. Learned counsel for the petitioner submitted that the Notification dated 09.06.2020 was issued on the basis of Board Meeting of respondent-RFC and the decision as was taken in the Meeting, by the respondent-RFC, dated 18.03.2020, where the Board, after discussing the previous litigation of III category of employees, who were involved and after taking the legal opinion, took the following decision, which is reproduced as under:-

**"Litigation arose due to withdrawal of Pension Scheme**

i) On withdrawal of the pension scheme the RFC Officers Association as well as RFC Employees Federation and other employees of the Corporation approached to the Hon'ble High Court during the year 2005 Onwards by way of filing of different writ petitions challenging validity of withdrawal of the pension scheme. All these writ petitions were dismissed by the Hon'ble High Court on 02.03.2017 pronouncing that Section 48 of the SFCs Act, 1951 empowers the board to make such scheme with the approval of SIDBI and the State Govt. and the withdrawal of pension scheme is absolutely in accordance with law. Therefore, the Corporation issued notification for withdrawal of pension scheme on 21.07.2017.

ii) That being aggrieved against the said decision RFC Officers Association filed special appeal before Hon'ble Division Bench (SAW 659/2017). The Hon'ble Division Bench decided the cases on 07 05.2018 by setting aside the withdrawal of the Pension Regulations of 1990 on the ground that compliance of Sec. 48 of the SFCs Act, 1951 have not been followed by the Corporation while withdrawing the said Regulation and also categorized the employees & officers of the Corporation in following three categories regarding their entitlement for the Pension Scheme.

**Category-I:** Those who retired prior to the order dated 12.08.2004 would be governed by the Pension Regulations of 1990 unless the family of the retired employee opted for CPF Scheme. It may be under guidance or misguidance pursuant to the order dated 12.08.2004. It is more so when such an employee has accepted the benefits of CPF Scheme. Thus, so far as first category of the employees are concerned, those retired prior to 12.08.2004 would be governed by the Pension Scheme under the Regulations of 1990 unless accepted CPF scheme with consequential benefits. It has otherwise been provided by the Corporation in the order dated 12.08.2004, thus even if the order aforesaid is interfered; the outcome would remain the same.

**Category-II:** The second category would be of those who retired after 12.08.2004 but opted for Pension Scheme prior to retirement under the Pension Regulations of 1990. It is by an option or by compulsory application of the Pension Scheme as per Regulation 7 of the Regulations of 1990. Since the order dated 12.08.2004 goes they would be governed by the Pension Regulations of 1990 unless they have opted for CPF Scheme. This would take care of set of employees who did not withdraw themselves from the Pension Scheme. The RFC has, however, extended the benefit of CPF and accordingly sent the cheques. If the amount was withdrawn by the retired employees without a protest or returning the cheque/amount with an objection before filing the writ petitions, they would not be entitled to pensionary benefits leaving those who returned the amount immediately on receipt in protest to govern them by the CPF Scheme. The direction aforesaid has been given in the light of the provisions of the Pension Regulations of 1990 itself which keeps even CPF Scheme alive.

It was not necessary for all the employees to govern themselves by the pensionary Scheme but could have retained themselves under the CPF Scheme though by giving option for it. Accordingly, while the Pension Regulations of 1990 survive, the CPF Scheme also remains alive. Accordingly, the RFC is directed to extend pensionary benefits under the Pension Regulations of 1990 to those who retired after

12.08.2004 unless they opted for CPF Scheme or accepted the amount towards CPF without protest and accordingly it was not returned. It would be taken towards acceptance of CPF Scheme and, therefore, only writ petitions were filed after lapse of few years.

**Category-III:** The third category of the petitions are those who are still in service. The question is as to whether they can be governed by the Pension Regulations of 1990. Since we have recorded finding that Pension Regulations of 1990 remain in effect in view of quashing of the order dated 12.08.2004, thus whoever has opted for the Pension Scheme, would continue unless the RFC withdraws or amend the Pension Regulations of 1990 by applying the procedure given under Section 48 of the Act of 1951. Thus, third set of employees would be governed accordingly if they have not opted for CPF Scheme. It is subject to the rider that the Pension Regulations of 1990 are not withdrawn by applying the procedure given under section 48 of the Act of 1951.

**iii) In compliance of the decision taken in the Pre-Litigation Committee held on 27.07.2018 Corporation filed SLP against the decision of Hon'ble Division Bench of Rajasthan High Court but the Hon'ble Supreme Court upheld the said decision on 28.01.2019 with the observation that "we are not inclined to interfere with the impugned judgment" and also dismissed our review application on 03.04.2019.**

iv) Meanwhile, the AAG of Rajasthan Dr. Manish Singhvi also opined that the State Govt. can also file SLP if the state has to also part with the resources. Accordingly, the State Govt. also filed SLP bearing SLP (Civil) Diary No. 11066/2019 against the order dated 07.05.2018 passed by the Hon'ble Division Bench. But the said SLP was also dismissed on 16.04.2019 at the preliminary stage i.e. without issuance of the notices. Again, as per the decision of the Pre-Litigation Committee held on 08.07.2019 State Govt. filed Review Petition before the Hon'ble Apex Court but the same has also been dismissed.

v) After dismissal of the SBCWP No. 5450/2009 filed by the RFC Officers Association & Ors the Corporation

during pendency of Special Appeal issued Notification dated 21.07.2017 regarding withdrawal of the Pension Regulations of 1990.

That being aggrieved against issuance of said Notification, yet another writ petition came to be filed by Shri Sudeep Kumar Pokharna & others against RFC & State bearing DB Civil Writ Petition No. 4375/2018 challenging the Gazette Notification dated 21.07.2017 on the ground that the said notification has retrospective effect, therefore, the same is not tenable in the eye of law and therefore may be quashed.

The Hon'ble Division Bench of Rajasthan High Court vide its Order 26.02.2020 (Annexure-A) allowed the writ petition and quashed the impugned notification dated 21.07.2017, which was issued and published by the RFC withdrawing the pension scheme w.e.f. 21.06.2004, on the ground that the basic order of withdrawal of the pension has already been set aside as the Corporation has not followed the provisions as prescribed under section 48 of the SFCs Act, 1951 and **the same was upheld by the Hon'ble Apex Court.** However, liberty has been granted to the Corporation for withdrawing the pension regulation following the due procedure as prescribed u/s 48 of the SFCs Act, 1951.

To apprise the Board of Directors about the verdict given by the Hon'ble Division Bench of Rajasthan High Court, Jaipur (as pronounced on 26.02.2020) in the matter of Shri Sudeep Kumar Pokharna & others against RFC & State bearing DB Civil Writ Petition No. 4375/2018, a Status Note on Pension matter was placed before the Board of Directors in its meeting held on 02.03.2020. The Board desired that after receipt of the Judgment dated 26.02.2020, an Agenda Note will be circulated through Circulation before the Board as per court's decision for withdrawal of the RFC Employees Pension Regulations, 1990 and after following the due procedure, as prescribed under, Section 48 of the State Financial Corporations Act, 1951, a fresh Notification shall be issued and published in the Rajasthan Gazette.

It was further submitted that the financial condition of the Corporation is not healthy and in order to curb the administrative expenses the management has already

sent approx. 1/3 employees of the Corporation have been sent on reverse deputation.

Not only this at present there are 22 units in which 317 employees are working whereas all Regional Offices have been abolished due to Financial stringencies.

**Keeping in view the above background, the Corporation has sought legal opinion from the Major R.P. Singh AAG of the State Govt. regarding withdrawal of Pension Regulation and as per his opinion the Corporation can take decision for withdrawal of the pension regulation from retrospective date as permitted vide Section 48(3) of SFCs Act, 1951. Regulation 3 of Pension Scheme, 1990 will not be an impediment because this regulation in any case is contrary to Section 48(3) the Act, 1951, and therefore, ultra vires. He further opined that the Corporation should now consult SIDBI, take express sanction of the State Government to proceed and publish the decision so taken in the gazette.**

**Similarly, Shri Virendra Lodha, Sr. Advocate has given his opinion which is as under: -**

**"That RFC should now consult SIDBI and there upon take an express sanction of the state government to proceed and publish its decision to withdraw the pension regulation with retrospective effect in terms of section 48 of the Act of 1951 precisely section 48(3) of the Act of 1951 and there upon publish the aforesaid decision in the official gazette. In view of above, RFC may proceed afresh in accordance with section 48 of the Act of 1951."**

**In view of the aforesaid facts and after taking into consideration the financial implication on the Corporation and also in light of legal opinion tender by Major R P Singh. AAG and Shri Virendra Lodha, "Senior Advocate, It is proposed that Rajasthan Financial Corporation Regulation, 1990 be withdrawn with retrospectively effect i.e. 21.06.2004 as decided in the year 2004 itself.**

**That after due approval of the Board of Directors of Rajasthan Financial Corporation in this regard an Office Order shall be issued by the Corporation**

**with consultation of SIDBI as well as prior sanction of the State Government and same shall be published in the official Gazette of the State afresh.”**

13. Learned counsel for petitioners further submitted that despite the fact that the respondent-RFC lost all the litigations up to the Hon'ble Apex Court in the cases belonging to all the categories including the petitioners, who belong to second category, the impugned decision dated 18.03.2020, was still taken by the respondents - RFC in their Board Meeting, based on some legal opinion.

14. Learned counsel further submitted that the co-ordinate Bench vide judgment dated 07.05.2018 decided the complete controversy and which attained finality in respect of Category I & II persons (vide judgment dated 07.05.2018) and in the case of Category III by the judgment dated 26.02.2020, still respondent-RFC issued the impugned Notification dated 09.06.2020. He further submitted that the Notification as issued, is clearly illegal and bad in law as it was issued to water down or to annul the mandamus as issued by the Court in case of **V.K. Gupta** (supra), whereby the action of respondent-RFC for withdrawal of the Pension Regulations of 1990 by order dated 12.08.2004 was held to be illegal and bad in law. Now again, by restarting the cycle, respondents have again withdrawn the Regulation of 1990 by the impugned Notification dated 09.06.2020, with retrospective effect from 21.06.2004. Counsel further submitted that the complete action is in violation of Article 14 & 16 of the Constitution of India, being palpably arbitrary, unreasonable, illegal and unjustified on

the face of record and therefore, the impugned notification deserves to be quashed and set aside.

15. In support of his arguments, learned counsel relied upon the judgments passed by the Hon'ble Apex Court in the case of ***The Punjab State Cooperative Agricultural Development Bank Ltd. Vs. Registrar Cooperative Societies and Ors.***<sup>4</sup> where the Hon'ble Apex Court examined the issue of retrospective amendments to the pension schemes and held the same being violative of Article 14 & 16 of Constitution of India.

16. Learned counsel further cited the judgment passed by the Hon'ble Apex Court in the case of ***Dr. Jaya Thakur Vs. Union Of India***<sup>5</sup> where the Hon'ble Apex Court examined and decided that while Parliament may amend laws to alter their general basis, it cannot nullify a specific mandamus or judicial order issued in a particular case, as doing so would violate the separation of powers.

17. Learned counsel further placed reliance upon the judgment passed by the Hon'ble Supreme Court in the case of ***S. R. Bhagwat & Ors. & Vs. State of Mysore***<sup>6</sup>.

18. Lastly, learned counsel relied upon the judgment passed by the Hon'ble Supreme Court in the case of ***The Commissioner, Karnataka Housing Board Vs. C Muddaiah***<sup>7</sup>, wherein the Hon'ble Apex Court relied upon the previous judgment passed in ***S.R. Bhagat*** (supra).

19. In view of the above submissions and the judgments, as relied upon by learned counsel for the petitioner, it is prayed that

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4. (2022) 3 SCC 559

5. 2023 (10) SCC 276

6. 1995 (6) SCC 16

7. 2007 (7) SCC 689

the impugned notification order dated 09.06.2020 be declared ultra-vires & quashed and the writ petition be allowed.

20. Per contra, Mr. Virendra Lodha, learned Senior Counsel for the respondent-RFC vehemently opposed the submissions advanced on behalf of petitioners and submitted that the notification dated 09.06.2020 was issued by the respondent-RFC, following the process as provided under Section 48 of the Act of 1951. He further submitted that though the issue had attained finality in the case of **V.K. Gupta** (Supra), the coordinate Bench, while deciding the D.B. Civil Review Petition No. 190/2018 reviewed its earlier order dated 07.05.2018, by order dated 15.11.2018. He further submitted that considering the said review order and the notification dated 21.07.2017, the Coordinate Bench, while deciding the writ petition in the case of **Sudeep Kumar** (Supra), wherein, the challenge was made to the notification dated 21.07.2017, though quashed the impugned notification dated 21.07.2017, however, granted liberty to the respondent-RFC to proceed afresh in accordance with law. Learned counsel for the respondents-RFC further submitted that pursuant to the liberty so granted by the Coordinate Bench vide its order dated 26.02.2020, the respondent RFC, as per the mandate of the Act of 1951, discussed the entire issue in its Board meeting dated 18.03.2020 and after taking legal opinion, took the final decision to withdraw the Pension Regulations of 1990 with effect from 21.06.2004.

21. Learned Senior Counsel for the respondent-RFC, submitted that since the liberty was granted by the Coordinate Bench vide the order dated 26.02.2020, the respondent Corporation, after

taking a decision in its Board meeting, issued the notification dated 09.06.2020 and rightly gave it retrospective effect. He further submitted that the said action was taken strictly in accordance with law, therefore, the notification dated 09.06.2020 does not violate any provision of the Constitution of India or any legal rights of the petitioners herein.

22. The issue involved in the present case pertains majorly to respondent RFC, however, a formal reply has also been filed on behalf of the state, wherein the submissions and arguments advanced by the respondent RFC have been adopted.

23. In view of the above submissions, learned counsels for the respondents prayed that the notification dated 09.06.2020 has been rightly and lawfully issued and the judgments relied upon by the petitioners are not applicable to the facts of the present case and prayed that the writ petition deserves to be dismissed.

24. Heard learned counsel for the parties.

25. This Court, on the basis of the submissions advanced by learned counsels for the parties and the previous judgments and orders passed by the Coordinate Benches of this Court, noted that the issue of relating to withdrawal of pension scheme, as provided to the officers and employees of the respondent RFC under Pension Regulations of 1990, and its withdrawal by office order dated 12.08.2004, had already been examined in the past. The Co-ordinate Bench, vide judgment dated 07.05.2018, categorized the officers and employees into three distinct categories and held them entitled to pensionary benefits in accordance with the said categorization under Regulation of 1990 and quashed the order dated 12.08.2004 passed by respondent-RFC.

26. The order of the Coordinate Bench dated 07.05.2018, was assailed by the respondent-RFC by filing Special Leave Petition before the Hon'ble Supreme Court, which came to be dismissed vide order dated 28.01.2019.

27. This Court further noted, from the documents as annexed by the petitioners, that the State Government had also filed a Special Leave Petition before the Hon'ble Apex Court challenging the order dated 07.05.2018 passed by the Co-ordinate Bench. However, said Special Leave Petition also came to be dismissed vide Order dated 16.04.2019.

28. Upon dismissal of the Special Leave Petitions by the Hon'ble Apex Court and consequent quashing of the office order dated 12.08.2004, the officers and employees of the respondent-RFC, falling under the three categories, became entitled to pensionary benefits under the Pension Regulations of 1990. However, during the pendency of the Review Petition No.190/2018 filed in the case of **V.K. Gupta** (supra) and connected matters, the respondent-RFC again issued a notification dated 21.07.2017, giving rise to further litigation by repeating the same issue and grounds to create further unnecessary litigation and to unsettle the settled legal position in regard to the pension of the Employee of respondent-RFC.

29. Since a fresh notification dated 21.07.2017 was issued by the respondent-RFC seeking withdrawal of Pension Regulations of 1990, the Coordinate Bench, while hearing the review petition filed by the respondent RFC bearing D.B. Civil Writ Review Petition No.190/2018, **reviewed its judgment dated 07.05.2018, vide order dated 15.11.2018, in respect of employees falling**

**only under the third category, to which admittedly, the present petitioners do not belong.**

30. As the Coordinate Bench vide its order dated 15.11.2018, reviewed its order in respect of persons falling under the third category, therefore, another Coordinate Bench, while deciding the challenge to the notification dated 21.07.2017, in the case of **Sudeep Kumar** (Supra), though quashed the notification dated 21.07.2017, however granted liberty to the respondent RFC to proceed afresh in accordance with law. It is on account of this liberty as granted by the Coordinate Bench while passing the judgment in the case of **Sudeep Kumar** (Supra) that the respondent RFC issued the notification dated 09.06.2020. By the said impugned notification, the respondent RFC restarted the same exercise of withdrawal of pensions scheme issued under the Pension Regulations of 1990, retrospectively from 21.06.2004, which was done earlier also by Office order dated 12.08.2004, and same was held to be illegal and bad in law by the coordinate bench vide its order dated 07.05.2018. The said order attained finality, **as no interference was made by the Hon'ble Apex Court by dismissing the Special Leave Petitions filed by the respondent-RFC as well as the State Government, both, and including the review petition filed by the respondent RFC.**

31. Despite the controversy having attained finality after the judgment passed by the Coordinate Bench in **V. K. Gupta** (Supra) as discussed above, the respondent-RFC, on the very same grounds, once again took the decision in its Board meeting dated 18.03.2020 relying upon the reports of Chartered Accountant and

financial experts, as well as legal opinions, as referred in the preceding paragraphs, to revoke the ***Rajasthan Financial Corporation Employees' Pension Regulations, 1990*** with effect from **21.06.2004**.

32. The entire action of the respondent RFC had already been held to be illegal and bad in law twice by the above discussed judicial pronouncements of this Court in the previous litigation on the issue. The purpose of issuance of notification dated 09.06.2020 is only to annul the judicial pronouncements of this Court, which were also affirmed by the Hon'ble Supreme Court. The respondent-RFC issued the impugned notification dated 09.06.2020 without any justification or without any legal basis for the same.

33. This Court fails to find any justified reason and ground behind issuance of impugned notification after considering the reply of respondent-RFC. The complete reply is frivolous and baseless and have no basis to reopen the settled legal issue and controversy. **A perusal of the reply reveals that it merely contains the repetition of the facts pertaining to the previous litigation and no new facts have been brought on record to justify the action of issuance of impugned notification, which has been given retrospective effect from 21.06.2004.**

34. The relevant paras of the reply, wherein reference has been made to the decisions taken regarding the fresh withdrawal of the pension scheme with retrospective effect and the reasons assigned, being relevant, is reproduced as under:-

**"Thus, the Hon'ble Division Bench granted liberty to the answering Respondent to proceed afresh. Consequently, in accordance with section 48 of the State Financial Corporation Act, 1951, the Board of Directors of the Corporation held meeting on 18.03.2020. After considering the entirety of the judgment passed in various Writ Petitions, including the Review Petition, as well as the financial conditions of the answering Respondent Corporation, it was decided to withdraw the Pension Regulation, 1990, effective from 21.06.2004. this decision was made following the prescribed procedure in Section 48 of the State Financial Corporation Act, 1951, which includes consultation with SIDBI and obtaining prior approval from the State Government.**

**That in compliance with the decision of the Board of Directors of the answering Respondent dated 18.03.2020, the answering Respondent Corporation obtained approval of the State Government vide their letter No. P.10 (3) Udyog/1/2020 dated 27.05.2020.**

**That simultaneously, consultation was conducted with SIDBI also and the SIDBI vide its letter dated 28.05.2020 observed as under:-**

**"In this connection, we convey permission to the Corporation proposal for withdrawal of RFC Employees Pension Regulation, 1990, subject to Corporation complying with other provisions of Section 48 and 48A of the SFC Act, 1951.**

**Please forward a copy of the relevant Gazette Notification for record in due course."**

**That on the basis of the aforementioned approval from the State Government and the communication from SIDBI, the answering Respondent Corporation presented the matter once again before the Board of Directors at its meeting held on 29.05.2020. The Board finally decided to withdraw the REC Employees Pension Regulations, 1990, effective.**

**That it is only after sequence of events that the Gazette Notification has been issued and published, dated 11.06.2020. "**

35. Surprisingly, in a case where the challenge has been made to the impugned notification which was given retrospective effect, and where the issue has already attained finality up to the Hon'ble Supreme Court, **there is still no specific reason given in reply to justify the impugned notification, nor does it counter the grounds raised by the petitioners in the writ petition. The reply filed by the respondents is completely silent, which is highly casual, particularly in a matter, where the validity of the impugned notification is under challenge before the Division Bench of the High Court.**

36. With such a casual reply, the contest made to the impugned notification, in the considered opinion of this Court, is highly frivolous and devoid of merits.

36. This Court has considered the judgments as cited by the learned counsel for the petitioners. This Court shall now deal with the judgments one by one:-

(i) In the case of ***The Punjab State Cooperative Agricultural Development Bank Ltd. (Supra)***, the Hon'ble Apex Court, while examining the issue of retrospective amendment seeking to take away valuable rights, held that an amendment having retrospective operation, results in the withdrawal of benefits already available to an employee under existing rules, amounts to taking away vested or accrued rights. Such retrospective withdrawal of rights was held to be violative of Article 14 & 16 of the Constitution of India.

In the said case, the Hon'ble Supreme Court further, in Paragraph 50, explained and decided the issue in the said case by way of illustration that **"if a person, while entering into**

**service, had the expectation that as per the existing schemes or rules he would get certain rights in the future, then those accrued/vested rights cannot be taken away by giving retrospective effect to any scheme, as the same would be violative of Articles 14 and 16 of the Constitution of India”.**

37. The relevant part of the judgment, is being reproduced as under:-

“43. The concept of vested/accrued right in the service jurisprudence and particularly in respect of pension has been examined by the Constitution Bench of this Court in *Chairman, Railway Board and Ors. (supra)* as follows:

“11. On the basis of the said decision of the Full Bench of the Tribunal, other Benches of the Tribunal at Bangalore, Hyderabad, Allahabad, Jabalpur, Jaipur, Madras and Ernakulam have passed orders giving relief on the same grounds. These appeals and special leave petitions have been filed against the decision of the Full Bench and those other Benches of the Tribunal. Some of these matters were placed before a Bench of three learned Judges of this Court on 28-3-1995 on which date the following order was passed:

Two questions arise in the present case, viz., (i) what is the concept of vested or accrued rights so far as the government servant is concerned, and (ii) whether vested or accrued rights can be taken away with retrospective effect by Rules made under the proviso to Article 309 or by an Act made under that article, and which of them and to what extent.

We find that the Constitution Bench decisions in *Roshan Lal Tandon v. Union of India* (1968) 1 SCR 185; *B.S. Vadera v. Union of India* (1968) 3 SCR 575 and *State of Gujarat v. Raman Lal Keshav Lal Soni* (1983) 2 SCC 33 have been sought to be

explained by two three-Judge Bench decisions in K.C. Arora v. State of Haryana (1984) 3 SCC 281 and K. Nagaraj v. State of A.P. (1985) 1 SCC 523 in addition to the two- Judge Bench decisions in P.D. Aggarwal v. State of U.P. (1987) 3 SCC 622 and K. Narayanan v. State of Karnataka 1994 Supp (1) SCC 44. Prima facie, these explanations go counter to the ratio of the said Constitution Bench decisions. It is not possible for us sitting as a three-Judge Bench to resolve the said conflict. It has, therefore, become necessary to refer the matter to a larger Bench. We accordingly refer these appeals to a Bench of five learned Judges.”

44. This Court, after taking note of the earlier view on the subject further held in Chairman, Railway Board and Ors. (supra) as under:

“20. It can, therefore, be said that a Rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, but a Rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.

24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant Rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the Rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the

employee under the existing Rule is arbitrary, discriminatory and violative of the rights guaranteed Under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon (1968) 1 SCR 185, B.S. Vadera (1968) 3 SCR 575 and Raman Lal Keshav Lal Soni (1983) 2 SCC 33.

25. In these cases we are concerned with the pension payable to the employees after their retirement. The Respondents were no longer in service on the date of issuance of the impugned notifications. The amendments in the Rules are not restricted in their application in futuro. The amendments apply to employees who had already retired and were no longer in service on the date the impugned notifications were issued.

33. Apart from being violative of the rights then available Under Articles 31(1) and 19(1)(f), the impugned amendments, insofar as they have been given retrospective operation, are also violative of the rights guaranteed Under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement.

47. The exposition of the legal principles culled out is that an amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing Rule indeed would divest the employee from his vested or accrued rights and that being so, it would be held to be violative of the rights guaranteed Under Articles 14 and 16 of the Constitution.

48. In the instant case, the Bank pension scheme was introduced from 1st April 1989 and options were called from the employees and those who had given their option became member of the pension scheme and accordingly pension was continuously paid to them without fail and only in the year 2010, when the Bank failed in discharging its obligations, Respondent employees approached the High Court by filing the writ petitions. The Bank later on withdrawn the scheme of pension by deleting Clause 15(ii) by an amendment dated 11th March, 2014 which was introduced with effect from 1<sup>st</sup> April, 1989 and the employees who availed the benefit of pension under the scheme, indeed their rights stood vested and accrued to them and any amendment to the contrary, which has been made with retrospective operation to take away the right accrued to the retired employee under the existing Rule certainly is not only violative of Article 14 but also of Article 21 of the Constitution."

(ii). In the case of **Dr. Jaya Thakur** (supra), the Hon'ble Supreme Court examined the issue of nullifying the direction of the Court by issuance of fresh legislation. The Hon'ble Supreme Courts, held such an act to be bad in law. The relevant paras of the said judgment is reproduced here as under:-

"103. As such, it is clear that this Court issued a specific mandamus that no further extension shall be granted to the second respondent. Undisputedly, the Union of India as well as the respondent No.2- Sanjay Kumar Mishra in Writ Petition (Civil) No. 456 of 2022 herein were parties to the said proceedings.

104. A Constitution Bench of learned Seven Judges of this Court in the case of Madan Mohan Pathak and another v. Union of India and others (1978) 2 SCC 50 was considering the question of constitutional validity of the Life Insurance Corporation (Modification of Settlement) Act, 1976. In exercise of power vested under Section 49 of the Life Insurance Corporation Act, 1956, right from 1959, various settlements were arrived at between the Life Insurance Corporation ("LIC" for short) and its employees from time to time in regard to various matters relating to terms and conditions of

service of Class III and Class IV employees. The said settlements were also approved by the Board of the LIC as also by the Central Government. An Ordinance was promulgated by the President of India on 25th September 1975, called the Payment of Bonus (Amendment) Ordinance 1975. Subsequently, the said Ordinance was replaced by the Payment of Bonus (Amendment) Act, 1976, which was brought into force with retrospective effect from the date of the Ordinance, ie., 25th September 1975. This amending law considerably curtailed the rights of the employees to bonus in industrial establishments. However, it had no impact insofar as the employees of the LIC were concerned. However, the employees of the LIC were denied the benefits which they were entitled to. In these circumstances, the All-India Insurance Employees' Association and some others filed writ petition(s) before the High Court of Calcutta for a writ of mandamus and prohibition directing the LIC to act in accordance with the terms of the Settlement dated 24th January 1974 read with the administrative instructions.

105. The learned Single Judge of the Calcutta High Court allowed the writ petition and issued a writ of mandamus and prohibition as prayed for in the said writ petition. The LIC preferred a Letters Patent Appeal ("LPA" for short). However, during the pendency of the LPA, on 29th May, 1976, the Act impugned before this Court was enacted. The effect of the enactment was to annul the benefits which the employees of the LIC were entitled to in view of the mandamus issued by the Calcutta High Court.

106. Bhagwati, J (speaking for himself, Krishna Iyer and Desai, JJ.) observed thus:

"9....We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the Life Insurance Corporation is bound to obey the writ of mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year April 1, 1975 to March 31, 1976 to Class III and Class IV employees

107. Beg. C.J. in his concurring judgment observed thus:

"32. I may, however, observe that even though the real object of the Act may be to set aside the result of the, mandamus issued by the Calcutta High Court, yet, the section does not mention this object at all. Probably this was so because the jurisdiction of a High Court and the effectiveness of its orders derived their force from Article 226 of the Constitution itself. These could not be touched by an ordinary act of Parliament. Even if Section 3 of the Act seeks to take away the basis of the judgment of the Calcutta High Court, without mentioning it, by enacting what may appear to be a law, yet, I think that, where the rights of the citizen against the State are concerned, we should adopt an interpretation which upholds those rights. Therefore, according to the interpretation I prefer to adopt the rights which had passed into those embodied in a judgment and became the basis of a mandamus from the High Court could not be taken away in this indirect fashion.

108. It could thus be clearly seen that the Constitution Bench of learned Seven Judges of this Court clearly held that by a subsequent enactment, the writ of mandamus issued by the Calcutta High Court crystalizing the rights and liabilities between the parties cannot be annulled.

114. It could, thus, clearly be seen that this Court has held that the effect of the judgments of this court can be nullified by a legislative act removing the basis of the judgment. It has further been held that such law can be retrospective. It has, however, been held that retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. It has been held that the defect pointed-out should have been cured such that the basis of the judgment pointing out the defect is removed. This Court has, however, clearly held that nullification of mandamus by an enactment would be impermissible legislative exercise. This Court has further held that transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India."

(iii) In the case of **S.R. Bhagwat** (supra), the Hon'ble Supreme Court held that judicial pronouncements rendered between the parties cannot be made ineffective by exercising the legislative power to enact new provision. The relevant paras, more particularly Para Nos. 12, 19 & 20, are reproduced here as under:-

"12. It is now well settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance over-rules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect. We may only refer to two of these judgments.

19. We, therefore, strike down Section 11 sub-section (2) as unconstitutional, illegal and void. So far as the underlined impugned portions of Section 4 sub-sections (2), (3) and (8) are concerned, they clearly conflict with the binding direction issued by the Division Bench of the High Court against respondents-State and in favour of the petitioners. Once respondent-State had suffered the mandamus to give consequential financial benefits to the allottees like the petitioners on the basis of the deemed promotions such binding direction about payment of consequential monetary benefits cannot be nullified by the impugned provisions of Section 4. Therefore, the underlined portions of sub-sections (2), (3) and (8) of Section 4 will have to be read down in the light of orders of the court which have become final against the respondent-State and in so far as these provisions are inconsistent with these final orders containing such directions of judicial authorities and competent courts, these impugned provision of Section 4 have to give way and to the extent of such inconsistency must be treated to be inoperative and ineffective. Accordingly the aforesaid provisions are read down by observing that the statutory provisions contained in sub-sections (2), (3) and (8) of Section 4 providing that such persons who have been given deemed promotions shall not be

entitled to any arrears for the period prior to the date of their actual promotion, shall not apply in cases where directions to the contrary of competent courts against the respondent-State have become final.

20. In the result, this writ petition succeeds. Section 11 sub-section (2) is struck down as ultra vires the legislative powers of the State. Sub-sections (2), (3) and (8) of section 4 are read down as aforesaid. The respondent-State shall comply with the directions contained in the binding decision of the High Court of Karnataka dated 21.9.1971 in Writ Petition Nos. 2598, 3302-3304 and 4586 of 1970 and shall make available all consequential financial benefits to the concerned petitioners as directed by the High Court within a period of eight weeks from the receipt of the orders of this Court at its end. Rule issued in the Writ Petition is accordingly made absolute with costs."

(iv) In the case of **C. Muddaiah (supra)**, the Hon'ble Apex Court, while considering the earlier judgment in **S.R. Bhagwat (supra)**, held that a binding judicial pronouncement between the parties cannot be made ineffective or inoperative with the aid of legislative power by making a provision which, in substance and in reality, overrides and overrules a decision rendered by a competent court. Such process virtually renders a judicial decision ineffective by indirectly exercising appellate power over a judicial forum which is impermissible. The relevant paras of the of the judgment are reproduced as under:-

"18. The Court stated:

It is now well settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment and is not in the realm of a legislative enactment which displaces the basis of foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect.

22. The Court stated:

We, therefore, strike down Section 11 Sub-section (2) as unconstitutional, illegal and void. So far as the underlined impugned portions of Section 4, Sub-sections (2), (3) and (8) are concerned, they clearly conflict with the binding direction issued by the Division Bench of the High Court against the respondent-State and in favour of the petitioners. Once respondent-State had suffered the mandamus to give consequential financial benefits to the allottees like the petitioners on the basis of the deemed promotions such binding direction about payment of consequential monetary benefits cannot be nullified by the impugned provisions of Section 4. Therefore, the underlined portions of Sub-sections (2), (3) and (8) of Section 4 will have to be read down in the light of orders of the court which have become final against the respondent-State and in so far as these provisions are inconsistent with these final orders containing such directions of judicial authorities and competent courts, these impugned provisions of Section 4 have to give way and to the extent of such inconsistency must be treated to be inoperative and ineffective. Accordingly the aforesaid provisions are read down by observing that the statutory provisions contained in Sub-sections (2), (3) and (8) of Section 4 providing that such person who have been given deemed promotions shall not be entitled to any arrears for the period prior to the date of their actual promotion, shall not apply in cases where directions to the contrary of competent courts against the respondent-State have become final.”

38. This Court, after considering the previous mandamus issued in the case of **V. K. Gupta** (supra), decision in the review petition dated 15.11.2018 and the order passed in the case of **Sudeep Kumar** (supra), noted the fact that the issue, which started in the year 2004, had attained finality by the above judgments of this Court, as well as on the dismissal of the special leave petitions and the review petition by the Hon'ble Supreme Court but the same has again been reopened by the respondent-RFC by issuing the impugned notification dated 09.06.2020. Once the controversy in respect of category I and II attained finality vide orders dated

07.05.2018 read-with order dated 15.11.2018 and, admittedly the petitioners belong to Category II, then there was no justification, ground and reason available with the respondent RFC to issue the impugned notification on the basis of the liberty as granted by the co-ordinate Bench while quashing the impugned notification dated 21.07.2017, which was issued in respect of Category III employees, as the respondent had no such authority or right under the law.

39. This Court finds one of the reasons for issuance of the impugned notification as mentioned in the decision of Board meeting of respondent-RFC is that respondent-RFC is facing certain financial difficulties in the implementation of the Pension Scheme and therefore, by exercising its powers under Section 48 of the of the Act of 1951, they took a decision to withdraw the Pension Scheme retrospectively with effect from 21.06.2004. This Court noted that the Hon'ble Apex Court, in the case of **Punjab State Cooperative Agricultural Development Bank** (supra), specifically considered this issue and held that on the ground of non availability of financial resources, vested rights accrued to an employee cannot be taken away retrospectively. The relevant para No. 50 of the said judgment reads as under:-

"55. In our view, non-availability of financial resources would not be a defence available to the Appellant Bank in taking away the vested rights accrued to the employees that too when it is for their socio-economic security. It is an assurance that in their old age, their periodical payment towards pension shall remain assured. The pension which is being paid to them is not a bounty and it is for the appellant to divert the

resources from where the funds can be made available to fulfil the rights of the employees in protecting the vested rights accrued in their favour.”

40. This Court, while examining the validity of the impugned notification dated 09.06.2020 in the light of the judgments as cited before this Court by the learned counsel for the petitioners, also considered the reply as filed to justify the validity of the said impugned notification. However, as noted above, the reply is baseless and evasive and further contains no valid and justified ground to issue the impugned notification dated 09.06.2020, by which the Pension Regulations of 1990 have been withdrawn by giving retrospective effect from 21.06.2004.

41. This Court also noted that the co-ordinate Bench, while deciding the Review Petition No.190/2018 vide order dated 15.11.2018, specifically observed that no ground was made out to review the order dated 07.05.2018, even with reference to the notification dated 21.07.2017. The Court further held that, while dealing with the issue with reference to the employees falling in third category, they would continue to be governed under the Regulations of 1990 unless the same are withdrawn by applying the procedure given under Section 48 of the Act of 1951.

42. This Court noted that the co-ordinate Bench while deciding the review petition, the issue in respect of category I and II was not touched, denied any kind of review of the order. Therefore, any liberty, would not allow the respondent-RFC to reopen the settled legal controversy again, even by following the procedure under Section 48 of the Act of 1951. It is only in respect of category III employees it was observed that respondent can

withdraw the scheme by applying the procedure given under Section 48 of the Act of 1951. Though the petitioners are not from the III category, however, this Court noted even the notification dated 21.07.2017 as issued also failed. Therefore, in the given facts and circumstances, after losing the battle twice the respondent-RFC cannot be permitted to act in a highly illegal, arbitrary and unjustified manner. At that cost of repetition, the relevant paras of review order dated 15.11.2018 is reproduced here as under:-

“We have considered the issue aforesaid but find no ground for review of the order even in reference to the Notification dated 21.07.2017. This Court, while dealing with the issue in reference to the employees falling in third category, made it clear to continue them under the Regulations of 19990 unless withdrawn by applying the procedure given under Section 48 of the Act of 1951. In view of the above, we do not find any reason to review the order when it is clear in its terms. It is, otherwise, informed that the Notification dated 21.07.2017 has been challenged by maintaining a separate writ petition. The issue in reference to the Notification would be determined in the said writ petition.

The review petition is disposed of with the aforesaid. It is, however, with the clarification that while dealing with the issues pertaining to employees falling in second category, the word “GPF” has been mentioned as “CPF” at some places due to typographical error. It has been corrected in a separate order passed today on the misc. Application preferred by the employees. Accordingly, the order aforesaid would apply to the present order also.”

43. This Court has also minutely examined the decision of the respondent-Board dated 18.03.2020 and noted that despite discussion of the previous litigation and the orders passed by the co-ordinate Bench of this Court as well as the Hon'ble Supreme Court, the impugned notification dated 09.06.2020 was still issued on the basis of certain legal opinion, which this Court finds contrary to law.

44. This unnecessary/unwarranted and intentional exercise by the respondent-RFC to unsettle the issue again by issuance of the impugned notification dated 09.06.2020 cannot be taken lightly, as again and again, the Courts have been burdened by respondent-RFC for the same issue which is no longer res integra.

45. In view of the above discussion and after considering the previous judgments as passed by co-ordinate Benches in respect of the Pension Regulations of 1990 pertaining to the employees of the respondent-RFC, it is observed that the State and its instrumentalities are biggest litigants and their approach of creating unnecessary litigation, which not only seriously affects the litigants but also wastes the precious time of the judiciary, cannot be allowed to go unnoticed.

46. We are satisfied with the grounds as raised by the learned counsel for the petitioners by which they have challenged the validity of the impugned notification dated 09.06.2020 on the basis of the judgments of the Hon'ble Supreme Court and find that the impugned notification is violative of Article 14 & 16 of the Constitution of India and is per se illegal, arbitrary, unjustified and unreasonable, with no basis and justification on record to sustain. Therefore, the impugned notification dated 09.06.2020 is declared

as illegal and bad in law and same is hereby quashed and set aside. Any consequential action taken by the respondents in pursuance of the impugned notification dated 09.06.2020, shall also stands quashed.

48. Both the writ petitions are allowed.

49. Pending application(s), if any, also stand disposed of.

(RAVI CHIRANIA),J

(INDERJEET SINGH),J