A NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY & ANR.

v.

B D SINGHAL & ORS.

B (Civil Appeal No. 2310 of 2021)

JULY 15, 2021

[DR. DHANANJAYA Y CHANDRACHUD AND M. R. SHAH, JJ.]

C *Service Law – Superannuation – Enhancement of Superannuation age – New Okhla Industrial Development Authority (NOIDA) constituted under provisions of the Act of 1976 – On 30 September 2012, Government of Uttar Pradesh acceded to a proposal of the Appellant-NOIDA to enhance the age of superannuation of its employees from fifty-eight to sixty years,* D *prospectively – High Court set aside the decision of the State government to give prospective effect and in exercise of its power of judicial review u/Art.226 of the Constitution directed that retrospective effect be given to the Government Order from 29 September 2002 – Whether High Court transcended the limits of its* E *power of judicial review – Held: High Court trenched upon the realm of policy making and assumed to itself, jurisdiction over a matter which lies in the domain of the executive – Whether the age of superannuation should be increased and if so, the date from which this should be effected is a matter of policy into which the High Court ought not to have entered – Whether the decision to* F *increase the age of superannuation should date back to the resolution passed by NOIDA or should be made effective from the date of the approval by the State government was a matter for the State government to decide – Ultimately, in drawing every cut-off, some employees would stand on one side of the line while the others* G *would be positioned otherwise – This element of hardship cannot be a ground for the High Court to hold that the decision was arbitrary – The proposal of NOIDA could not have given rise to a legitimate expectation since it was a mere recommendation which was subject to the approval of the State Government – Respondent-employees could not have claimed a vested right that the* H *enhancement in the age of retirement should be made effective from*

the date on which NOIDA had resolved to submit a proposal for the approval of the government – U.P. Industrial Area Development Act, 1976 – s.19 – New Okhla Industrial Development Authority Service Regulations, 1981 – Regn.25 – Doctrine of legitimate expectation – Inapplicability of – Constitution of India – Art.226 – Judicial Review.

Doctrines/Principles: Principle of promissory estoppel – When applicable and when not applicable – Held: For the principle of promissory estoppel to apply, one party must have made an unequivocal promise, intending to create or affect a legal relationship between the parties – The principle of promissory estoppel will not apply if the communication issued was either a proposal or a recommendation.

Doctrines/Principles: Doctrine of legitimate expectation – Held: The doctrine of legitimate expectation is grounded in fairness and reasonableness – There is a legitimate expectation that the actions of the State are fair and reasonable.

Government Orders/Notifications/Circulars: Government order – When retrospectively applicable – Held: Government order can be given retrospective application only if expressly stated or inferred through necessary implication.

Allowing the appeals, the Court

HELD: 1. Whether the age of superannuation should be enhanced is a matter of policy. If a decision has been taken to enhance the age of superannuation, the date with effect from which the enhancement should be made falls within the realm of policy. The High Court in ordering that the decision of the State government to accept the proposal to enhance the age of superannuation must date back to 29 June 2002 evidently lost sight of the factual background, more specifically (i) the rejection of the original proposal on 22 September 2009; and (ii) the judgment of the Division Bench of the High Court dated 17 January 2012 refusing to set aside the order rejecting the proposal on 22 September 2009 which has attained finality. But there is a more fundamental objection to the basis of the decision of the High Court. The infirmity in the judgment lies in the fact that the

High Court has trenched upon the realm of policy making and has assumed to itself, jurisdiction over a matter which lies in the domain of the executive. Whether the age of superannuation should be increased and if so, the date from which this should be effected is a matter of policy into which the High Court ought not to have entered. [Para 19][995-B-D]

2. The factual reasons which the High Court has indicated are specious. The High Court has termed the decision to give prospective effect to the enhancement of the age of superannuation from 30 September 2012 as arbitrary on the ground that the government should have "acted instantly" when the resolution was received from NOIDA, and that there was no justification not to grant retrospective effect when the resolution had been received "more than three years back". Both these factors are erroneous. As a matter of fact, the resolution of the Board of NOIDA dated 9 July 2012 (at its 176th meeting) was forwarded to the State government on 17 July 2012 and a decision was taken in about two months from the date of receipt of the proposal. The High Court's observation on the delay of three years in taking a decision on the resolution of NOIDA is in reference to the 2005 resolution, which was rejected on 22 September 2009. The Government resolution of 2012 was impugned before the High Court, and the 2009 rejection order had attained finality in view of the judgment of the division bench of the High Court on 17 January 2012 which was not challenged before this court. [Para 20][995-E-H]

3. Whether the decision to increase the age of superannuation should date back to the resolution passed by NOIDA or should be made effective from the date of the approval by the State government was a matter for the State government to decide. Ultimately, in drawing every cut-off, some employees would stand on one side of the line while the others would be positioned otherwise. This element of hardship cannot be a ground for the High Court to hold that the decision was arbitrary. When the State government originally decided to increase the age of superannuation of its own employees from fifty-eight to sixty years on 28 November 2001, it had left the public sector corporations

to take a decision based on the financial impact which would result if they were to increase the age of superannuation for their own employees. [Para 21][996-A-C]

4. From time to time the authorities of the State took a decision bearing upon the exigencies of service prevailing in each organisation. Different corporations of the State are governed by their service rules and regulations, and by the exigencies of service. The State government had evidently determined that it was for each organisation to consider and determine the impact of the financial burden, and based on that the organisation was to submit a proposal for the approval of the government. [Para 22][996-C, E-F]

5. The High Court's observation that the Government order on 30 September 2012 increasing the age of superannuation prospectively is arbitrary seems to be based on the premise that the respondent-employees have a vested right to the increase in the age of retirement on the passage of the resolution by NOIDA. However, Section 19 of the UP Industrial Area Development Act 1976 stipulates that regulations – which would include amendments as in this case – will require the previous approval of the State Government. The employees will have a vested right to the increased age of superannuation only after the service regulations are modified upon approval of the State Government, and from such date as maybe prescribed by the Government. Para 1(ii) of the government order issued on 30 September 2012 clearly and in unambiguous terms states that the order shall come into force prospectively. The government order can be given retrospective application only if expressly stated or inferred through necessary implication. Therefore, the respondent-employees could not have claimed a vested right that the enhancement in the age of retirement should be made effective from the date on which NOIDA had resolved to submit a proposal for the approval of the government. [Para 23][996-G-H; 997-A-B]

6. The argument of the respondents that the appellant-authority is estopped from claiming that the government order issued on 30 September 2012 cannot be given retrospective effect from 9 July 2012 since the Board resolution proposed an

increase in the retirement age of its employees with 'immediate effect' is unsustainable. For the principle of promissory estoppel to apply, one party must have made an unequivocal promise, intending to create or affect a legal relationship between the parties. The recommendation of NOIDA cannot create or alter the legal relationship since it is subject to the approval of the government. The principle of promissory estoppel will not apply if the communication issued was either a proposal or a recommendation. Since the enhancement of the age of superannuation is a 'public function' channelised by the provisions of the statute and the service regulations, the doctrine of promissory estoppel cannot be used. Though NOIDA sought the approval of the State government for the enhancement with 'immediate effect', it never intended or portrayed to have intended to give retrospective effect to the prospectively applicable Government order. The representation of NOIDA could not have given rise to a legitimate expectation since it was a mere recommendation which was subject to the approval of the State Government. Hence, the doctrine of legitimate expectation also finds no application to the facts of the present case. [Para 24][997-C-E; 998-C-D]

7. The argument of the employees that since they had moved the Chief Minister with a representation in August 2012 before their date of superannuation which was to fall at the end of the month and that they should have the benefit of the enhancement in the age of superannuation has no substance. On 31 August 2012, the respondents moved the High Court but no interim relief was granted to them and they attained the age of superannuation. They have not worked in service thereafter. Since the High Court's judgment dismissing the challenge to the government order dated 30 September 2012 has attained finality, the submission cannot be accepted. [Para 26][999-F-G]

State of Uttar Pradesh v. Dayayanand Chakrawarthy **(2013) 7 SCC 595 – distinguished.**

Monnet Ispat and Energy Ltd. v. Union of India **(2012) 11 SCC 1:[2012] 7 SCR 644** and *State of Jharkhand v.*

Brahmputra Metallics Ltd., Ranchi, **[Decision of Supreme Court in Civil Appeal No. 3860-62 of 2020] – relied on.**

P.Mahendran v. State of Karnataka **(1990) 1 SCC 411: [1989] 2 Suppl. SCR 385;** *C.Gupta v. Glaxo-Smithkline Pharmaceuticals Ltd*. **(2007) 7 SCC 171: [2007] 7 SCR 800;** *Harwinder Kumar v. Chief Engineer,Karmik* **(2005) 13 SCC 300: [2005] 5 Suppl. SCR 317;** *U.P Jal Nigam v. Jaswant Singh* **(2006) 11 SCC 464: [2006] 8 Suppl. SCR 916;** and *U.P Jal Nigam v. Radhey Shyam Gautam* **(2007) 11 SCC 507: [2007] 4 SCR 583 – referred to.**

Case Law Reference

[1989] 2 Suppl. SCR 385	**referred to**	**Para 11 (iii)**
[2007] 7 SCR 800	**referred to**	**Para 11 (iii)**
(2013) 7 SCC 595	**distinguished**	**Para 13 (v)**
[2012] 7 SCR 644	**relied on**	**Para 24**
[2005] 5 Suppl. SCR 317	**referred to**	**Para 25**
[2006] 8 Suppl. SCR 916	**referred to**	**Para 25**
[2007] 4 SCR 583	**referred to**	**Para 25**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2310 of 2021.

From the Judgment and Order dated 25.01.2018 of the High Court of Judicature at Allahabad in Writ C-No. 43780 of 2012.

With

Civil Appeal No. 2311 of 2021.

Vinod Diwakar, AAG, Ravindra Kumar, Anuvrat Sharma, Antariksh Singh, Ms. Alka Sinha, Ms. Tanya Shree, Ejaz Maqbool, Ms. Akriti Chaubey, Advs. for the appearing parties.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

1. On 30 September 2012, the Government of Uttar Pradesh acceded to a proposal of the Appellant to enhance the age of

A superannuation of its employees from fifty-eight to sixty years, prospectively. A Division Bench of the High Court of Judicature at Allahabad set aside the decision of the State government to give prospective effect to the enhancement in the age of superannuation and in the exercise of its power of judicial review under Article 226 of the Constitution directed that retrospective effect be given to the Government
B Order from 29 September 2002. The appeals by New Okhla Industrial Development Authority[1] and the State of Uttar Pradesh question the correctness of this determination. Simply put, the appeals raise the issue as to whether the High Court has transcended the limits of its power of judicial review.

C

I The Facts

2. The New Okhla Industrial Development Authority is constituted under the provisions of the UP Industrial Area Development Act 1976[2]. The object was to constitute an authority for the development of certain areas of the Statenotified under Section 3 of the Act, into industrial and
D urban townships. The legislation provides for the constitution of the authority, its functions, powers, and for the appointment of the staff members. While the administrative head is appointed by the State government, Section 5 of the Act provides for the appointment of the staff:

E

> **"5. Staff of the Authority.** - (1) Subject to such control and restrictions as may be determined by general or special orders of the State Government, the Authority may appoint such number of officers and employees, as may be necessary for the performance of its functions, and may determine their grades and designations.
>
> F (2) Subject as aforesaid the officers and other employees of the Authority shall be entitled to receive from the funds of the Authority, such salaries and allowances and shall be governed by such other conditions of service as may be agreed upon with the Authority."

Section 19 enables the authority, with the previous approval of the
G State government to frame regulations for the administration of the affairs of the authority. Section 19 reads as follows:

> **"19. Power to make regulations.** - (1) The Authority may, with the previous approval of the State Government, make regulation

[1] "NOIDA".

H [2] "the Act".

not inconsistent with the provisions of this Act or the rules made thereunder for the administration of the affairs of the Authority.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulation may provide for all or any of the following matters, namely,-

(a) the summoning and holding of meetings of the Authority, the time and place where such meetings are to be held, the conduct of business at such meetings, and the number of members necessary to form a quorum thereat;

(b) the powers and duties of the Chief Executive Officer;

(c) the form of register of application for permission to erect a building;

(d) the management of properties of the Authority ;

(e) fees to be levied in the discharge of its functions;

(f) such other matters as are to be provided for in regulation."

In pursuance of its power under Section 9 of the Act, the Authority framed the New Okhla Industrial Development Authority Service Regulations, 1981[3] governing recruitment, appointment, pay, and other service conditions of the staff. Regulation 25 of the Noida Regulations, 1981 states that the age of superannuation of the employees is fifty eight. It reads as follows:

"Retirement 25. An employee shall retire at the age of fifty-eight years."

3. On 28 November 2001, the State government issued a notification[4] enhancing the age of retirement of 'Government servants' from fifty-eight to sixty years. Pursuant to this, Fundamental Rule 56A was amended on 27 June 2002 enhancing the age of superannuation of government servants to sixty years with effect from 28 November 2001.

4. On 29 June 2002, the Board of NOIDA resolved to recommend that the age of superannuation of its employees should be increased from fifty-eight to sixty years. A recommendation to that effect was submitted to the State government on 22 March 2005, since an amendment of the NOIDA regulations,1981 would require the previous approval of the State government in terms of Section 19 of the Act.

[3] "NOIDA Regulations, 1981".
[4] No. 1098/Pers-1/2001

A 5. On 2 September 2005, the State government informed NOIDA that the decision on its proposal was deferred. Eventually, on 22 September 2009, the State government rejected the proposal to enhance the age of retirement of NOIDA employees. Challenging the decision of the State government, proceedings were initiated under Article 226 of the Constitution before the High Court of Judicature at Allahabad[5] by certain employees seeking:

B

(i) A Writ of *certiorari* to quash the government order dated 22 September 2009; and

(ii) A Writ directing the respondents to those proceedings not to retire the employees at the age of fifty-eight and to allow them to continue till they attain the age of sixty years.

C

6. A Division Bench of the High Court rendered judgment in the writ proceeding on 17 January 2012 by which it directed NOIDA to consider the issue in its next Board meeting after taking into account the financial burden that may be occasioned to the authority by an increase in the age of retirement. The High Court specifically left it open to the government to consider whether to give effect to the increase in the age of retirement from the date on which NOIDA resolved to bear the financial burden or from such other date as the government may find expedient. As para 13 of the operative directions indicates:

D

E

"13. Having regard to facts and circumstances, we dispose of the writ petition with directions that NOIDA may consider the matter in its next Board meeting, taking into account its earlier resolution made in the year 2002, to bear the financial burden, after financial assessment of such burden, and the effect of increase of retirement age on other employees. It may thereafter refer the matter to the concerned Administrative Department of the State Government for its evaluation and recommendation, and for forwarding the same to the State Government for its approval. We also direct that if such a decision is taken by the State Government, it will be open to the State Government to consider to give effect to· the increase in the age of retirement with effect from the date when the NOIDA had resolved to bear the financial burden, or from any such date, which the State Government may find it expedient."

F

G

7. On 9 July 2012, the Board of NOIDA at its 176th meeting resolved to recommend to the State government to increase the age of

H

[5] Writ Petition No. 48162/2010.

retirement for its employees from fifty-eight to sixty years "with immediate effect". The resolution was communicated to the State government by a letter dated 17 July 2012 which, in its material segment reads as follows:

> "…the Board in its 176th Meeting held on 9.7.2012 has passed a resolution proposing to increase the age of superannuation from 58 to 60 years (attested copies of the agenda and the Minutes of the Board resolution are enclosed), wherein it is clearly stated that the financial burden on account of increasing the age of retirement from 58 to 60 years would be borne by the Authority from its own resources and no financial aid of any kind would be taken from the State Government either at present or in the future. Therefore, it is requested that the increase in the age of retirement of the officers *I* employees of the Authority be increased from 58 to 60 years with immediate effect."

8. On 27 August 2012, a writ petition was instituted by the first and second respondents to (i) challenge the order of the State government dated 22 September 2009 rejecting the original proposal for enhancement of the age of retirement; and (ii) for a direction not to retire the first and second respondents at the age of fifty-eight and to allow them to continue until the age of sixty. Now, at this stage it is material to take note of certain facts pertaining to the first and second respondents. The second respondent was appointed in service on 21 March 1977 (his date of birth being 18 August 1954). The first respondent was appointed on 6 March 1980 (his date of birth being 15 August 1954). Both the employees were due to retire on 31 August 2012 on attaining the then prevailing age of superannuation. On 31 August 2012, notice was issued on the writ petition but no interim order was passed resulting in both of them superannuating on 31 August 2012.

9. On 30 September 2012, the Government of Uttar Pradesh acceded to NOIDA's proposal for enhancing the age of retirement to sixty years. However, this was expressly made prospective in terms of the paragraph 1 (ii), which reads as follows:

> "(ii) This provision shall come into force in the NOIDA with immediate effect (from the date of issue of this Govt. order) and there shall not for any retrospective effect."

10. The petition before the High Court was amended to incorporate a relief seeking to quash paragraph 1(ii) of the order of the State government dated 30 September 2012. A Division Bench of the High

A Court at Lucknow allowed the writ petition and struck down the provisions of para 1(ii). While doing so the High Court directed that the increase in the age of superannuation to sixty years shall have retrospective effect from 29 June 2002, and the first and second respondents would be deemed to have worked until the extended age of retirement. Their benefits were directed to be computed accordingly. This led to the filing B of Special Leave Petitions before this court under Article 136. Assailing the judgment of the High Court, a companion petition has been filed by the Government of Uttar Pradesh. While issuing notice on 19 November 2018 on NOIDA's Special Leave Petition, this Court granted an *ad interim* stay of the judgment of the High Court.

C

II The Contentions

11. Challenging the judgment of the High Court, Mr Ravindra Kumar, learned Counsel appearing on behalf of NOIDA has urged the following submissions:

D

(i) The Service Regulations and consequently amendments to them are in the nature of subordinate legislation. No part of the amended Regulations could have been struck down – para 1(ii) in this case – unless they were declared to be ultra vires the provisions of the Constitution or the parent Statute. There is no such declaration by the High Court E while delivering the impugned judgement;

(ii) The High Court has committed a manifest error while directing that the revision in the age of the retirement shall apply retrospectively with effect from the date of the Resolution dated 29 June 2002. While issuing such a F direction, the High Court failed to consider the following:

(a) The Government Order dated 30 September 2012 was issued approving the recommendation of NOIDA dated 17 July 2012 and not in the context of the earlier recommendation dated 29 June 2002;

G

(b) The earlier recommendation dated 29 June 2002 had been rejected by the State Government on 22 September 2009. The Writ Petition[6] which had been filed challenging the State government's rejection order dated 22 September 2009 was decided on 17

H

[6] WP No. 48162 of 2010.

January 2012, much before the filing of the writ petition by first and second respondents on 27 August 2012 in which the impugned judgment was delivered;

(c) In the above Writ Petition though a prayer was made to quash the Government Order dated 22 September 2009, yet no such relief as prayed was granted. On the contrary, the only direction was that NOIDA may consider the matter again in its next Board Meeting and thereafter refer the matter to the State government for its approval. It was observed in the judgement dated 17 January 2012 that if any decision approving the recommendation is taken by the State Government, it will be open to it to decide the date from which it may find it expedient to increase the age of retirement; and

(d) After the judgement dated 17 January 2012, NOIDA sent a fresh recommendation to the State Government on 17 July 2012. This recommendation was ultimately accepted by the State Government anda Government Order dated 30 September 2012 was issued by it. This Government Order directs that the increase in the age of retirement from fifty-eight to sixty years "shall come into force with immediate effect (from the date of issue of this Government Order) and there shall not be any retrospective effect".

(iii) When the order directing increase in the age of retirement is clear, namely that it shall come into force with immediate effect coupled with the words that the increase shall not have any retrospective effect, then the intention of the maker of the subordinate legislation categorical obviates any possible interpretation giving it retrospective effect. In these circumstances, the Court cannot issue directions giving retrospective effect to the amendment. The golden rule of statutory interpretation is that in the absence of an express provision or a necessary intendment providing retrospectivity, the interpretation must only be prospective. An exception to this rule is only available in matters of

A procedure. (**P. Mahendran** v. **State of Karnataka**[7]; **C.Gupta** v. **Glaxo-Smithkline Pharmaceuticals Ltd.**[8]);

(iv) The observation of the High Court that the Government should have acted instantly "when the resolution was received by it more than 3 years back" is factually incorrect. B The Government Order dated 30 September 2012 itself recites that it is issued in reference to the recommendation dated 17 July 2012. Therefore, there was no delay of 3 years in the issuance of the Government Order. The Government Order was issued in a little more than 2 months. C The High Court has erred in directing that the writ petitioners shall be deemed to have worked with NOIDA till the age of sixty years and they be paid salary and other benefits for two years during which they never worked. The first and second respondents were due for retirement with effect from 31 August 2012. They filed the writ petition on or D about 27 August 2012, praying that they be permitted to continue on their posts till they attain the age of sixty years and salary be paid to them accordingly. However, while issuing notice on the writ petition or at any time thereafter no interim order was granted by the High Court. When the first and second respondents performed no work, they are E not entitled to receive salary for such period. The principle of 'no work no pay' will applicable in such a situation.The inability of the writ petitioners to persuade the High Court to grant interim orders cannot act to the advantage of the respondents. This is not a case of termination of services F which is later set aside by an order of the court thereby directing payment of salary as arrears;

(v) The High Court has granted relief which was not prayed. It has ordered that the increase in the age of retirement would be effective from 29 June 2002. The first and second G respondents in their counter affidavit (at page 146 and 155), have admitted that relief was prayed with effect from 9 July 2012. Thus, the direction contained in the impugned judgment that the increase in the age of retirement would be effective from 29 June 2002 is unsustainable;

H [7] (1990) 1 SCC 411.
[8] (2007) 7 SCC 171.

(vi) The effect of the impugned judgment runs contrary to the earlier Division Bench's judgment dated 17 January 2012, and is beyond the prayers made in the writ petition. It has resulted in demands from dozens of employees of NOIDA, who had retired decades ago. For example, in September, 2004, employees made demands seeking arrears of pay and allowances considering the retirement age as sixty years for them as well. The interpretation / direction given in the impugned judgment has a cascading effect and is unsustainable in law; and

(vii) The High Court was under the wrong impression that NOIDA, the authority that is to bear the financial burden consequent to the increase in the age of retirement supported the case of the Respondents/employees that the Government Order issued on 20 September 2012 must have retrospective effect.

12. Mr Vinod Diwakar, learned AAG for the State of Uttar Pradesh has adopted the submission of Mr Ravindra Kumar, learned Counsel for NOIDA.

13. Ms Tanya Shree, learned Counsel has appeared on behalf of the respondents to oppose the submissions in the appeals. Before elucidating the submissions, it would be necessary to extract a submission from the counter affidavit which has been filed by the respondents in response to the present proceedings. Paragraph 6 of the counter affidavit reads as follows:

> "Further, it is submitted that the Answering Respondents herein did not seek the benefit of enhancement of age of retirement of the employees of the Petitioner-Authority from the date of its earlier resolution dated June 29, 2002. In fact it was the case of the Answering Respondents before the Hon'ble High Court in Writ Petition being Writ-A No. 43780 of 2012 that the age of retirement of the Answering Respondents be enhanced w.e.f the date of resolution dated July 9, 2012 of the Petitioner-Authority and the Answering Respondents are only claiming a limited relief of enhancing the age of retirement of the Answering respondents w.e.f. the date of Resolution of the Petitioner-Authority i.e July 9, 2012."

A The above extract from the counter affidavit has clarified that the relief which the respondents – employees sought is the enhancement of the age of retirement with effect from 19 July 2012 which is the date on which the Board of NOIDA resolved to increase the age of retirement. In this backdrop, Ms Tanya Shree submitted as follows:

B (i) The decision of the State government dated 20 September 2011 to enhance the age of superannuation for its employees was circulated *inter alia* to public sector undertakings and corporations enabling them to determine whether they were in a position to bear the financial burden attendant upon an increase in the age of retirement. Upon examination of the financial impact, if each corporation resolved to accept the financial burden, it could then seek the approval of the State government. All such decisions were to be implemented only after the approval of the State government, though it was made clear that no financial grants would be provided to meet the additional cost outlay;

C

D

(ii) In the case of several other public sector corporations, the State government resolved to increase the age of retirement. In certain cases it resolved to give retrospective effect; for instance in the case of the Uttar Pradesh State Handicrafts Corporation Ltd., the government by its decision dated 17 April 2012 resolved to increase the age of retirement with effect from 20 December 2011;

E

(iii) On 16 August 2012, a letter was addressed by the respondents to the Chief Minister requesting for an enhancement in the age of retirement since NOIDA had agreed to bear the financial burden by its resolution dated 9 July 2012 and adverting to the fact that several employees would be retiring by the end of August 2012;

F

(iv) The State government did not provide any reasons why it did not make its decision operative with effect from 9 July 2012, the date when the resolution was passed by the Board of NOIDA to enhance the age of retirement;

G

(v) Though, the respondents had approached the government of Uttar Pradesh with a representation seeking permission to allow them to work till the age of 60 years, the

H

representation was not allowed.As a consequence of this they are entitled to the payment of their salary and all other consequential benefits occasioned by the extension in the age of retirement since it was the appellant authority that did not permit the respondents to continue in service though they were willing to work. In **State of Uttar Pradesh v. Dayayanand Chakrawarthy**[9] it was held that if the employer prevents the employee from performing his duties, the employee cannot be blamed for his absence from duty and the principle of 'no pay no work' shall not be applicable to such an employee; and

(vi) The Board resolution of 9 July 2012 proposed to increase the age of retirement of the employees with immediate effect. The authority is now estopped from going back on its own resolution and denying the benefit of the enhancement of age from the date of the resolution.

III The Analysis

14. The High Court while striking down para 1(ii) of the Government Orderdated 30 September 2012 to enhance the age of retirement with prospective effect (para 1(ii) of the government order makes this position clear) has directed that the enhancement of the age of retirement must date back to 29 June 2002. This direction giving retrospective effect to the enhancement in the age of retirement seems to be based on the fact that the original resolution of the Board of NOIDA to enhance the age of retirement wasissued on 29 June 2002. In granting this relief, the High Court has formulated two reasons in its judgment: *firstly*, the government order dated 30 September 2012 is arbitrary for having increased the age of retirement with effect from the date of the order without giving the benefit to employees who had retired prior to that date ;and *secondly*, there was no reason to refuse the benefit of an extension of the age of superannuation retrospectively when the resolution was received by the State government "more than three years back".

15. The reasons which have weighed with the High Court are based on factually incorrect premises and are founded on a misunderstanding of the legal position. After the Board of NOIDA resolved on 29 June 2002 to enhance the age of superannuation from

[9] (2013) 7 SCC 595.

A fifty-eight to sixty years, its recommendation was forwarded to the State government on 22 March 2005. On 2 September 2005, the State government deferred a decision on the recommendation. Subsequently, the proposal was rejected on 22 September 2009.

16. The order of rejection was challenged in writ proceedings[10] B which culminated in the judgment of the Division Bench rendered on 17 January 2012. The Division Bench refused to quash the order of rejection. Evidently, at that stage, the basic issue was in regard to whether the financial burden could be borne by an authority such as NOIDA. This is evident from the fact that the High Court while deciding upon the merits of the proceedings under Article 226 held that it was for the Board of C NOIDA to consider whether it could bear the financial burden occasioned by an increase in the age of retirement, and to thereafter move the State government for its approval. While disposing of the Writ Petition, the High Court specifically observed that "it will be open to the State government to consider to give effect to the increase in the age of D retirement with effect from the date when NOIDA has resolved to bear the financial burden, or from any such date, which the State Government may find it expedient."This order has attained finality since it was not challenged before this Court.

17. It was in terms of the order of the High Court that the Board E of NOIDA resolved on 9 July 2012 to recommend to the State government that the age of superannuation of its employees should be enhanced with immediate effect, and the additional financial outlay would be met from the resources of the authority without any claim for grants being made to the State government. The State government responded to this proposal by acceding to the request to enhance the age of F superannuation, though prospectively from 30 September 2012.

18. NOIDA, as an authority, constituted by the UP Industrial Area Development Act 1976 is bound by the rigour and discipline of the statute. The power to appoint officers and employees is conferred upon the authority by Section 5(i) "subject to such control and restrictions as may G be determined by general or special orders of the State government". Section 19 requires the prior approval of the State government to the regulations framed by the authority. The regulations governing the conditions of service were notified on 14 January 1981with the previous approval of the State government. Under Regulation 25 of the NOIDA

H [10] W.P No. 48162/2010.

Regulations 1981, the age of superannuation was fixed at fifty-eight years. Consequently, any enhancement of the age of superannuation would require an amendment of the service regulations necessitating, in terms of Section 19, the prior approval of the State government.

19. Whether the age of superannuation should be enhanced is a matter of policy. If a decision has been taken to enhance the age of superannuation, the date with effect from which the enhancement should be made falls within the realm of policy. The High Court in ordering that the decision of the State government to accept the proposal to enhance the age of superannuation must date back to 29 June 2002 has evidently lost sight of the above factual background, more specifically (i) the rejection of the original proposal on 22 September 2009; and (ii) the judgment of the Division Bench dated 17 January 2012 refusing to set aside the order rejecting the proposal on 22 September 2009 which hasattained finality. But there is a more fundamental objection to the basis of the decision of the High Court. The infirmity in the judgment lies in the fact that the High Court has trenched upon therealm of policy making and has assumed to itself, jurisdiction over a matter which lies in the domain of the executive. Whether the age of superannuation should be increased and if so, the date from which this should be effected is a matter of policy into which the High Court ought not to have entered.

20. The factual reasons which the High Court has indicated are specious. The High Court has termed the decision to give prospective effect to the enhancement of the age of superannuation from 30 September 2012 as arbitrary on the ground that the government should have "acted instantly" when the resolution was received from NOIDA, and that there was no justification not to grant retrospective effect when the resolution had been received "more than three years back".Both these factors are erroneous. As a matter of fact, the resolution of the Board of NOIDA dated 9 July 2012 (at its 176th meeting) was forwarded to the State government on 17 July 2012 and a decision was taken in about two months from the date of receipt of the proposal. The High Court's observation on the delay of three years in taking a decision on the resolution of NOIDA is in reference to the 2005 resolution, which was rejected on 22 September 2009. As stated above, the Government resolution of 2012 was impugned before the High Court, and the 2009 rejection order had attained finality in view of the judgment of the division bench of the High Court on 17 January 2012 which was not challenged before this court.

A 21. Whether the decision to increase the age of superannuation should date back to the resolution passed by NOIDA or should be made effective from the date of the approval by the State government was a matter for the State government to decide.Ultimately, in drawing every cut-off, some employees would stand on one side of the line while the others would be positioned otherwise. This element of hardship cannot B be a ground for the High Court to hold that the decision was arbitrary. When the State government originally decided to increase the age of superannuation of its own employees from fifty-eight to sixty years on 28 November 2001, it had left the public sector corporations to take a decision based on the financial impact which would result if they were C to increase the age of superannuation for their own employees.

22. From time to time the authorities of the State took a decision bearing upon the exigencies of service prevailing in each organisation. By an OM dated 16 May 2005, the age of retirement of employees of the Agricultural Produce and Marketing Committee (APMC) was D enhanced with immediate effect, without giving retrospective operation.Similarly, on 15 December 2006 the age of retirement of employees of the UP Power Corporation was enhanced without conferring retrospective effect. On 17 April 2012, the age of superannuation of the employees of UP State Handicrafts Corporation Limited was enhanced with effect from 20 December 2011. On 22 May E 2012, the age of superannuation of the employees of the UP State Industrial Development Corporation Limited was enhanced "with immediate effect". Different corporations of the State are governed by their service rules and regulations, and by the exigencies of service. The State government had evidently determined that it was for each organisation F to consider and determine the impact of the financial burden, and based on that the organisation was to submit a proposal for the approval of the government.

23. The High Court's observation that the Government order on 30 September 2012 increasing the age of superannuation prospectively G is arbitrary seems to be based on the premise that the respondent-employees have a vested right to the increase in the age of retirement on the passage of the resolution by NOIDA. However, Section 19 of the Act stipulates that regulations – which would include amendments as in this case – will require the previous approval of the State Government. The employees will have a vested right to the increased age of H superannuation only after the service regulations are modified upon

approval of the State Government, and from such date as maybe prescribed by the Government. Para 1(ii) of the government order issued on 30 September 2012 clearly and in unambiguous terms states that the order shall come into force prospectively. The government order can be given retrospective application only if expressly stated or inferred through necessary implication**.** Therefore, the respondent-employees could not have claimed a vested right that the enhancement in the age of retirement should be made effective from the date on which NOIDA had resolved to submit a proposal for the approval of the government.

24. The argument of the respondents that the appellant-authority is estopped from claiming that the government order issued on 30 September 2012 cannot be given retrospective effect from 9 July 2012 since the Board resolution proposed an increase in the retirement age of its employees with 'immediate effect' is unsustainable. For the principle of promissory estoppel to apply, one party must have made an unequivocal promise, intending to create or affect a legal relationship between the parties.[11] The recommendation of NOIDA cannot create or alter the legal relationship since it is subject to the approval of the government. Justice H L Gokhale in a concurring opinion in **Monnet Ispat and Energy Ltd.** v. **Union of India**[12] clarified that the principle of promissory estoppel will not apply if the communication issued was either a proposal or a recommendation. The learned judge observed:

> "289. As we have seen earlier, for invoking the principle of promissory estoppel there has to be a promise, and on that basis the party concerned must have acted to its prejudice. In the instant case it was only a proposal, and it was very much made clear that it was to be approved by the Central Government, prior whereto it could not be construed as containing a promise. Besides, equity cannot be used against a statutory provision or notification."
>
> (emphasis supplied)

In **State of Jharkhand** v. **Brahmputra Metallics Ltd., Ranchi**[13], this court speaking through of one us (DY Chandrachud J) elaborated on the doctrine of legitimate expectation, which is grounded in fairness and reasonableness.Explaining that there is a legitimate expectation that the actions of the State are fair and reasonable, it was observed:

---

[11] Monnet Ispat & Energy Limited v. Union of India & Ors., (2012) 11 SCC 1.
[12] (2012) 11 SCC 1.
[13] Civil Appeal No. 3860-62 of 2020.

A "45. …The state must discard the colonial notion that it is a sovereign handing out doles at its will. Its policies give rise to legitimate expectations that the state will act according to what it puts forth in the public realm. In all its actions, the State is bound to act fairly, in a transparent manner. This is an elementary requirement of the guarantee against arbitrary state action which Article 14 of the Constitution adopts."

B

(emphasis supplied)

Since the enhancement of the age of superannuation is a 'public function'channelised by the provisions of the statute and the service C regulations, the doctrine of promissory estoppel cannot be used to challenge the action of NOIDA. Though NOIDA sought the approval of the State government for the enhancement with 'immediate effect', it never intended or portrayed to have intended to give retrospective effect to the prospectively applicable Government order. The representation of D NOIDA could not have given rise to a legitimate expectation since it was a mere recommendation which was subject to the approval of the State Government.Hence, the doctrine of legitimate expectation also finds no application to the facts of the present case.

25. The reliance placed by the respondents on **Dayanand** E **Chakrawarthy (supra)** to argue that they were willing to work till they attained the age of sixty years but were not permitted to, and thus the principle of 'no work no pay' would not be applicable is misplaced. In **Dayanand Chakrawarthy**, the issue before the two judge Bench of this court was whether prescription of different ages of retirement based on the mode of recruitment under the UP Jal Nigam (Retirement on attaining F age of superannuation) Regulations, 2005 was unconstitutional for violating Article 14 of the Constitution. This court held that the differential superannuating agewas discriminatory. However, by virtue of Regulation 31 of the UP Jal Nigam Services of Engineers (Public Health Branch) Regulations, 1978 the service conditions of State government employees G is applicable to the UP Jal Nigam employees. Therefore when the Jal Nigam through an Office memorandum had resolved that the age of retirement for its employees shall be fifty eight years, though it was sixty years for State government employees, it was set aside by this court in **Harwinder Kumar** v. **Chief Engineer, Karmik**[14]. In **Harwinder**

H [14] (2005) 13 SCC 300.

Kumar and the subsequent cases (**U.P Jal Nigam** v. **Jaswant Singh**[15]**; U.P Jal Nigam** v. **Radhey Shyam Gautam**[16]**)** involving the age of retirement of the UP Jal Nigam employees, this court had held that employees who had approached the courts shall be entitled to full salary until the age of sixty years. It was in this context that a two judge bench of this court speaking through Mukhopadhaya J made the following observation in **Dayanand Chakrawarthy**:

> "48. …We observe that the principle of "no pay no work" is not applicable to the employees who were guided by specific rules like Leave Rules, etc. relating to absence from duty. Such principle can be applied to only those employees who were not guided by any specific rule relating to absence from duty. If an employee is prevented by the employer from performing his duties, the employee cannot be blamed for having not worked, and the principle of "no pay no work" shall not be applicable to such employee."

In **Dayanand Chakrawarthy** the court directed payment of arrears deeming the employees to have worked till sixty years inspite of no interim order being issued in that regard because (i) the Office Memorandum was held *ultra vires* ; (ii) **Harwinder Kumar**, **Jaswant Singh**,and **Radhey Shyam Gautam** had already held that the age of retirement of the Jal Nigam employees shall be 60 years unless a regulation prescribing a lower retirement age is issued in terms of Regulation 31, and had extended this benefit to all the parties who had filed writ petitions. Therefore, the above observation must be read in the context of the distinct factual situation in the case.

26. The argument of the employees that since they had moved the Chief Minister with a representation in August 2012 before their date of superannuation which was to fall at the end of the month and that they should have the benefit of the enhancement in the age of superannuation has no substance. On 31 August 2012, the respondents moved the High Court but no interim relief was granted to them and they attained the age of superannuation. They have not worked in service thereafter. Since the High Court's judgment dismissing the challenge to the government order dated 30 September 2012 has attained finality, the submission cannot be accepted.

---

[15] (2006) 11 SCC 464.
[16] (2007) 11 SCC 507.

A 27. For the above reasons, we allow the appeals and set aside the impugned judgment and order of the Division Bench at Lucknow of the High Court of Judicature at Allahabad dated 25 January 2018 in WA No 43780 of 2012. The Writ Petition shall in consequence stand dismissed. There shall be no order as to costs.

B 28. Pending application(s), if any, stands disposed of.

Devika Gujral Appeals allowed.