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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

DR. DHANANJAYA Y. CHANDRACHUD; A.S. BOPANNA, JJ.

Civil Appeal No. 294 & 295 of 2022; January 25, 2022

The Chief Personnel Officer & Ors. *Versus* **A Nishanth George**

Constitution of India, 1950; Article 16 - Railways LARGESS Scheme - Scheme provided an avenue for backdoor entry into service and was contrary to the mandate of Article 16 which guarantees equal opportunity in matters of public employment. *[Referred to Manjit v. Union of India 2021 SCC OnLine SC 49] (Para 25)*

Appeal against High Court judgment which held that though the LARGESS Scheme was terminated, since the respondent's father superannuated on 1 January 2015 prior to 27 January 2017, the benefit of the scheme could be extended to him in terms of the notification dated 28 September 2018- Allowed - The impugned judgment issuing a mandamus for the appointment of the respondent cannot be sustained.

For Petitioner(s) Mr. Amrish Kumar, AOR Mr. Raj Bahadur Yadav, AOR

For Respondent(s) Ms. Priyadarshini, Adv. Mr. Nithin Saravanan, Adv. Ms. Arunima Singh, Adv. Ms. Manicka Priya S., Adv. Mr. Karunakar Mahalik, AOR Ms. Ridhima Malhotra, Adv. Mr. R. Nedumaran, AOR

J U D G M E N T

Dr. Dhananjaya Y. Chandrachud, J;

1. Leave granted.

2. In the two appeals which have come up for adjudication there is a challenge to the judgments dated 21 March 2018 and 3 September 2019 of the Madras High Court at its Madurai Bench. Since similar questions of law arise in these appeals, both the special leave petitions have been tagged and the arguments have been addressed together.

3. On 2 January 2004, the Railway Board under the Union Ministry of Railways introduced a scheme known as the Safety Related Retirement Scheme for the categories of Gangmen and Drivers. The scheme was intended to cover these "two safety categories" since the working of Drivers and Gangmen was perceived to have a crucial bearing on train operations and track maintenance. Taking note of the fact that the reflexes of the staff recruited to these categories and their physical fitness might deteriorate with advancing age, causing a safety hazard, the scheme incorporated the following provisions:

(i) Drivers and Gangmen in the age group of 55-57 could seek voluntary retirement;

(ii) When the application for retirement is accepted, employment would be considered for a 'suitable ward' of the employee;

(iii) The employee should have completed 33 years of qualifying service in order to be eligible for seeking voluntary retirement under the scheme;

(iv) The ward of the employee would be considered for employment only in the lowest recruitment grade of the category from which the employee sought retirement, depending upon eligibility and suitability but not in any other category;

(v) Applications for retirement under the scheme would be taken once a year with the cut-off date for reckoning the eligibility of the employees being 30th June, while the last date for submission of requests would be 31st July. The eligibility criteria such as age limit and educational qualifications will be determined with reference to the cut-off date;

(vi) The discretion to consider the request for retirement will vest with the administration depending on the shortage of staff, physical fitness and suitability of the ward in the category of Driver/Gangman as the case may be;

(vii) Persons who had completed 33 years of service and fell within the age group of 55-57 would be considered in the first phase followed by those between the age group of 53-55 years;

(viii) Criteria for the eligibility of wards would be as prescribed for direct recruitment; and

(ix) The request of the employee for retirement would be considered only if the ward is considered suitable for appointment in all aspects including medical fitness.

4. On 11 September 2010, the Railway Board notified that the benefit of the scheme would be extended to other safety categories of staff with a grade pay of Rs.1800/- per month. The period of qualifying service was reduced from 33 years to 20 years and the eligible age group from 55-57 to 50-57 years for seeking retirement under the scheme. The nomenclature of the scheme was modified to read as Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff ("LARSGESS Scheme"). The qualifying service period of 33 years and the age group of 55-57 years was to remain unchanged for Drivers.

5. The Railway Board also reiterated that retirement of an employee would be considered only if a ward is found suitable in all aspects. It was envisaged that the retirement of the employee and appointment of the ward should take place simultaneously. The LARSGESS Scheme was scrutinised by a Division Bench of the High Court of Punjab and Haryana in a decision dated 27 April 2016 in ***Kala Singh v. Union of India***, CWP No.7714 of 2016. In that case there was a challenge to an order of the Central Administrative Tribunal ("CAT") by which it dismissed the original application filed by employees of the Railways seeking the postponement of the dates of their voluntary retirement to the date on which their wards were appointed by the Railways under the LARSGESS Scheme. Justice Surya Kant (as the learned Judge then was) speaking for the Division Bench of the High Court observed: -

"We have heard learned counsel for the petitioners and are of the view that the very foundation of their claim, namely, the Safety Related Retirement Scheme, prima facie, does not stand to the test of Articles 14 and 16 of the Constitution of India. This policy is a device evolved by the Railways to make back-door entries in public employment and brazenly militates against equality in public employment."

The High Court while dismissing the writ petition directed the railway authorities to revisit its validity and sustainability keeping in view the principles of equal opportunity and elimination of monopoly in holding public employment before making any appointment under the "offending policy". An application which was moved by the Railways seeking recall or review of the order dated 27 April 2016 was dismissed by the Division Bench on 14 July 2017 in the following terms:

"We have heard learned senior counsel for the Railways at a considerable length. It is true that no notice was issued and the Railway Authorities were not heard while making prima facie observations but the fact of the matter is that the only direction issued by this Court was to re-visit the offending policy keeping in view the principle of equal opportunity in public employment before further appointments are made. Such a direction was necessitated keeping in view the mandate of the Constitution Bench in **State of Karnataka v. Uma Devi (2006) 4 SCC 1**."

6. The judgment of the High Court was challenged on behalf of the Railways before this Court under Article 136 of the Constitution. On 8 January 2018, while disposing of the SLP(Civil) Diary No.37460 of 2017 this Court passed the following order: -

"1. While disposing of SLP (Civil) Diary No.37460/2017 on 8-1-2018, this Court has made the following order:

"Heard learned counsel for the parties.

Delay condoned.

Since the direction in the impugned order is only to re-visit the Scheme in question, no interference is called for at this stage. **The Petitioner(s) may take a conscious decision in the matter within a period of six weeks from today**.

If any party is affected by the decision taken, such party may take remedy against the same in accordance with law.

The special leave petition is, accordingly, dismissed.

Pending application(s), including application for intervention, shall also stand disposed of."

(**emphasis supplied**)

7. On 26 September 2018, the Railway Board notified its decision to terminate the LARSGESS scheme in view of the observation of the Punjab & Haryana High Court in ***Kala Singh*** (supra). The notification is as follows:

"Sub: Termination of the LARSGESS Scheme in view of directions of Hon'ble High Court of Punjab and Haryana and the orders of Hon'ble Supreme Court of India in SLP(C) No.508/2018 dated 08.01.2018.

Ref: Board's letter of even number dated 27.10.2017.

The Hon'ble Punjab and Haryana High Court in its judgment dated 27.04.16 in CWP No.7714 of 2016 had held that the Safety Related Retirement Scheme 2004 (later renamed as the Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff {LARSGESS}, 2010) "*prima facie" does not stand to the test of Article 14 and 16 of the Constitution of India*." It had directed "*before making any appointment under the offending policy, let its validity and sustainability be revisited keeping in view the principles of equal opportunity and elimination of monopoly in holding*

public employment." Thereafter, in its judgment dated 14.07.17 (Review Petition RA-CW-330-2017 in CWP No.7714 of 2016), the Hon'ble High Court reiterated its earlier direction and stated "such a direction was necessitated keeping in view the mandate of the Constitution Bench in State of Karnataka Vs. Uma Devi, (2006) 4 SCC 1."

1.1 In the Appeal against the judgment of the Hon'ble High Court of Punjab & Haryana, the Hon'ble Supreme Court of India, while disposing of the SLP(C) No.508/2018 vide its order dated 8.01.18, declined to interfere with the directions of the High Court.

2. In compliance with the above directions, Ministry of Railways have revisited the scheme duly obtaining legal opinion and consulted Ministry of Law & Justice. Accordingly, it has been decided to terminate the LARSGESS Scheme w.e.f. 27.10.2017 i.e. the date from which it was put on hold. **No further appointments should be made under the Scheme except in cases where employees have already retired under the LARSGESS Scheme before 2710.17 (but not normally superannuated) and their wards could not be appointed due to the Scheme having been put on hold in terms of Board's letter dated 27.10.17 though they had successfully completed the entire process and were found medically fit**. All such appointments should be made within the approval of the competent authority.

3. Please acknowledge receipt."

(**emphasis supplied**)

Subsequently on 28 September 2018, the following decision was notified by the Railway Board:

"In supersession to Railway Board's letter No. E(P&A)I2015/RT-43 dated 26.09.2018, it is stated that while the LARSGESS Scheme continues to be on hold with effect from 27.10.2017 on account of various court cases to impart natural justice to the staff **who have already retired under LARSGESS scheme before 27.10.2017 (but not naturally superannuated) and appointment of whole wards was not made due to various formalities, appointment of such of the wards/candidates can be made with the approval of the competent authority**."

(emphasis supplied)

In the above backdrop, the following decision was taken on 5 March 2019 with regard to the appointment of wards under the LARSGESS Scheme where formalities were completed before 27 October 2017:

"2. As regards the cases where the wards had completed all formalities including Medical examination under LARSGESS Scheme prior to 27.10.2017 and were found fit, but the employees are yet to retire, the matter is pending consideration before the Hon'ble Supreme Court and further instructions would be issued as per directions of the Hon'ble Court."

Consequently, it appears that an application [IA 18573/2019, in Miscellaneous Application No(s). 346/2019 in Miscellaneous Application No(s).1202/2018 I Petition for Special Leave to Appeal No.508/2018] was moved before this Court in ***Union of India v. Kala Singh***, ***2019 SCC OnLine SC 1965***. By an order dated 6 March 2019, a two-Judge Bench of this Court observed:

"3. Since the Scheme stands terminated and is no longer in existence, nothing further need be done in the matter."

8. In ***Manjit v. Union of India***, ***2021 SCC OnLine SC 49*** the jurisdiction of this Court was invoked under Article 32 of the Constitution seeking a mandamus directing the Union of India and the Railways to appoint the petitioners in terms of the LARSGESS Scheme. Declining to accede to the request, this Court observed:

"6 The reliefs which have been sought in the present case, as already noted earlier, are for a writ of mandamus to the Union of India to appoint the petitioners in their respective cadres. A conscious decision has been taken by the Union of India to terminate the Scheme. This has been noticed in the order of this Court dated 6 March 2019, which has been extracted above. While taking this decision on 5 March 2019, the Union of India had stated that where wards had completed all formalities prior to 27 October 2017 (the date of termination of the Scheme) and were found fit, since the matter was pending consideration before this Court, further instructions would be issued in accordance with the directions of this Court. Noticing the above decision, this Court, in its order dated 6 March 2019, specifically observed that since the Scheme stands terminated and is no longer in existence, nothing further need be done in the matter. The Scheme provided for an avenue of a back door entry into the service of the railways. This would be fundamentally at odds with Article 16 of the Constitution. The Union government has with justification discontinued the scheme. The petitioners can claim neither a vested right nor a legitimate expectation under such a Scheme. All claims based on the Scheme must now be closed."

9. The Court observed that: (i) the grant of reliefs to the petitioners would only enable them to seek back door entry; (ii) the Union of India had correctly terminated the scheme; and (iii) no person can claim a vested right or legitimate expectation under the scheme.

10. At this stage, it would be material to note that in ***Narinder Siraswal v. Union of India***, **2019 SCC OnLine SC 1966** which was decided on 6 March 2019 by a two-Judge Bench (prior to the judgment of the 3-Judge Bench in ***Manjit*** (supra)), this Court allowed the petitioners before it to move the authorities with an appropriate representation since they were claiming the benefit of the scheme which was prevalent when their applications had been filed. The decision in ***Narinder Siraswal*** (supra) was noticed in the judgment of the 3-Judge Bench in ***Manjit*** (supra). In this backdrop, it becomes necessary now to advert to the facts of the two appeals.

11. (I) SLP (C) 906 of 2021:- The father of the respondent was a Senior Trackman in Southern Railway pursuant to his appointment on 7 February 1988. On 2 December 2010, he submitted an application for voluntary retirement under the LARSGESS Scheme. The application for voluntary retirement was returned by the Senior DPO, Madurai Division on 11 April 2011 on the ground that in terms of the date of birth furnished in the application (16 February 1954), the employee was overage on the cut-off date, i.e., on 1 July 2011. The respondent's father submitted a second application on 28 January 2014. On 31 December 2014, the employee retired and received his retirement benefits. The third application was submitted on 18 April 2015, seeking reconsideration of the rejection of the first application on the ground that the date of birth in the first application had been wrongly recorded. An OA was filed before the Madras Bench of the CAT in 2017 seeking a direction to provide employment to the respondent under the LARSGESS scheme. It was submitted that when the first application was made, the respondent's

father was within the age limit but the application was wrongly rejected due to miscalculation of age. The counsel for Railways had submitted that the application was made on 28 January 2014, in response to the notification issued in 2014. As on 1 January 2014, the respondent's father was over 57 years old, irrespective of whether his date of birth is considered as 16 February 1954 or 16 December 1954. The OA was dismissed on 11 December 2017 with the following observations:

"4. As the constitutional validity Scheme is suspect and no appointments are being made under the Scheme, it is not possible to give any directions to the Respondents to consider the case of the Applicant. In any case, it is not in dispute that the Applicant's father retired only on superannuation and not before the age of 57 years. Therefore the question of the applicant being appointed under the scheme never arose."

12. The respondent challenged the judgment of the Tribunal under Article 226 of the Constitution. By its judgment dated 3 September 2019, the High Court observed that the date of birth of the father of the respondent should be reckoned as 16 December 1954. The High Court observed that in view of the nature of the employment of the respondent's father, he should not be made to suffer for an inadvertent mistake. Hence, the application dated 2 December 2010 which had been received on 7 December 2010 was held to be well within the age limit prescribed under the LARSGESS Scheme. The High Court also held that though the scheme was terminated, since the respondent's father superannuated on 1 January 2015 prior to 27 January 2017, the benefit of the scheme could be extended to him in terms of the notification dated 28 September 2018.

13. (II) SLP(C) No.1417 of 2019:- The father of the respondent was working as Senior Trolley man in Southern Railways. On 29 September 2011, he opted for voluntary retirement under the LARSGESS scheme and sought the appointment of the respondent. The respondent qualified in the written examination. On 10 April 2012, the respondent was informed that he was found unfit in class AYE THREE but was found fit in class CEE ONE and below. He was informed that the acceptable medical classification for the post of Trackman under the rules was AYE THREE and so he was medically unfit for appointment to the post of Trackman under the scheme. The respondent appealed for constituting a Medical Board. On 4 January 2013, the Medical Board after examining the respondent, found him ineligible for appointment to the post of Trackman. The respondent submitted a representation to the Grievance Cell of Southern Railways to consider his claim for appointment as Trackman. The representation was rejected by a letter dated 12 December 2013. The respondent moved the Madras Bench of the CAT praying for his appointment under the Scheme. The Tribunal disposed of the case on 1 April 2016, directing the Railways to consider his case for appointment for any post of CEE ONE and below. The Tribunal by its judgement observed:

"8. It is not disputed that the applicant's father is still in service. The applicant's family cannot be said to be in immediate need of his support. His appointment can be considered under the scheme which permits an employee to take VRS and request for appointment of an eligible ward. In this the respondent also agreed that the applicant's ward is medically fit for the post of CEE ONE for which

the applicant has very much agreed. Hence the respondent is directed to act accordingly and simultaneously within six weeks on receipt of copy of the order.

9. In view of the fact that Respondents have admitted that applicant satisfied in CEE ONE and below post, therefore, he can be considered for any such post under the said category. On such considerations, suitable orders can be passed within six weeks from the date of receipt of copy of this order.

14. The Divisional Office of Southern Railway perused the files of the respondent to determine the feasibility of his appointment in CEE ONE posts and below. The claim of the respondent was rejected on 31 May 2016 in view of the notification of the Railway Board dated 2 January 2004 governing the LARSGESS scheme to the effect that the ward of the employee must be considered for appointment only in the lowest recruitment grade from which the employee seeks retirement. Since the respondent was found to be medically unfit for appointment in the category of Trackman and his father was due for retirement from service on 31 May 2016, the claim was rejected. The respondent once again moved an OA before the Tribunal. The Tribunal by its judgement dated 24 March 2017 noted that the respondent was declared to be unfit in the medical examination for the post of Trackman. However, the Tribunal observed that its earlier order on 1 April 2016 had recorded that the respondent was medically fit for the post of CEE ONE and below. The Tribunal accordingly directed the Railways to consider the respondent in a post according to his medical fitness (CEE ONE and below). In 2017, the respondent instituted a petition under Article 226 of the Constitution before the High Court for a mandamus directing compliance with the order of the Tribunal dated 24 March 2017. The High Court by its judgement dated 14 November 2017 directed the implementation of the judgement of the Tribunal. The Divisional Officer of the Southern Railway issued a communication on 17 January 2018 negating the claim of the respondent on the ground that the High Court of Punjab and Haryana had held that the LARSGESS Scheme was contrary to the provisions of Articles 14 and 16 of the Constitution. The claim was also rejected on the ground that the respondent could not be appointed for the following reasons:

(i) The father of the respondent had retired on superannuation on 31 May 2016 as Senior Trackman; and that a coordinate bench of the Madras High Court while deciding Writ Petition No. 1040/2017 had declined relief to a similarly placed employee who had continued to work until the date of superannuation; and

(ii) In terms of the Railway Board's letter dated 2 January 2004, the ward could be considered for appointment only in the lowest recruitment grade of the category from which the employee seeks retirement.

15. The respondent instituted a writ petition before the High Court. The High Court by its judgement dated 31 March 2018, came to the conclusion that the rejection of the claim was in disregard of the order of the Tribunal dated 24 March 2017. Accordingly, the petition was allowed by directing the Railways to comply with the order dated 24 March 2017, granting appointment to the respondent in any post in CEE ONE and below

categories. The judgements of the High court in the two cases have given rise to the present appeals.

16. While considering the merits of the appeal, it becomes necessary to note at the outset that the LARSGESS Scheme introduced by the Railways was considered in the judgement of a Division Bench of the Punjab and Haryana High Court in ***Kala Singh*** (supra). The High Court found that the scheme was a device evolved by the Railways to make back door entries in public employment and that it brazenly militated against equality in public employment. The High Court directed the railway authorities to revisit the validity of the scheme before making any appointments bearing in mind the principles of equal opportunity and the elimination of monopoly in public employment. A review petition was dismissed by the High Court. An SLP against the judgment of the Punjab and Haryana High Court was dismissed by this Court on 8 January 2018.

17. In the meantime, a decision was taken by the Railway Board on 26 September 2018, after seeking legal opinion from the Union Ministry of Law and Justice, to terminate the scheme with effect from 27 October 2017 which was the date on which it was put on hold. The Railway Board directed that no further appointments would be made under the scheme except in those cases where employees had already retired under the scheme before 27 October 2017 (but had not "naturally superannuated") and their wards could not be appointed despite successfully completing the entire process due to the scheme having been held in abeyance.

18. On 28 September 2018, the earlier decision was superseded by directing that in spite of the termination of the scheme, appointments of wards could be made with the approval of the competent authority in the case of staff who had retired before 27 October 2017 under the LARSGESS scheme (but not on attaining the normal age of superannuation) but in whose case appointments of wards was not made due to "various formalities". In ***Union of India v. Kala Singh*** (supra) a two judge Bench of this Court in its order dated 6 March 2019, observed that since the scheme stood terminated and was no longer in existence "nothing further need be done in the matter". In ***Narinder Siraswal*** (supra) which was decided on 26 March 2019, the two judge Bench of this Court permitted the petitioners who claimed the benefit of the scheme which was in existence when the applications were filed to move an appropriate representation. In ***Manjit*** (supra), a three judge Bench of this Court declined to entertain a petition under Article 32 on the ground that a conscious decision had been taken by the Union of India to terminate the scheme. The three judge Bench observed that the scheme was fundamentally contrary to the principles of equality of opportunity in public employment under Article 16 of the Constitution. Noting that the decision of the Union Government to discontinue the scheme was justified, the Court observed that all claims based on the scheme must now be closed.

19. Now it is in this backdrop that it is necessary to consider the facts insofar as they pertain to the two cases. Before dealing with the individual facts of the case, it must be determined if the claims of the respondents are covered by the exception clause in the

notification issued on 28 September 2018. The notification clearly envisages that in spite of the termination of the LARSGESS scheme, appointments under the scheme could only be made if (i) the staff had voluntarily retired (and not naturally superannuated) under the scheme before 27 October 2017; and (ii) appointment of the ward was not made because of 'formalities' which remained. The exception does not cover all pending claims. As a matter of fact, another Division Bench of the Madras High Court [Writ Petition 1040 of 2016] on 19 January 2017 had held that an employee who received service benefits till the date of superannuation, was not entitled to make a claim under the LARSGESS scheme. It was held:

"Mr. L. Chandrakumar, learned counsel appearing for the petitioner has objected the dismissal of the original application stating that retirement, pending adjudication of the original application, cannot be a ground for rejection of the claim for compassionate ground under the subject scheme. As rightly held by the learned Tribunal, there was no pre-mature retirement on the part of the first petitioner and the first petitioner also did not choose to file any appeal against the proceedings dated 12.09.2012 as directed by the authorities. The first petitioner, having continued to work and enjoy the services benefits till the date of superannuation cannot be allowed to make use of subject scheme seeking appointment. The scheme, as such, cannot be invoked, in the case on hand as to defeat the purpose, in letter and spirit of the object behind formulating the scheme."

20. From the above judgment, it is evident that a coordinate Bench of the High Court had taken the view that the benefit of the LARSGESS scheme could not be extended where an employee had attained the age of superannuation in the normal course before 27 October 2017. The respondents' fathers superannuated on 31 May 2016 (SLP (C) No. 1417 of 2019) and on 31 December 2014 (SLP (C) No. 906 of 2021). The contention of the respondents that since the claims were pending adjudication before various fora, the delay cannot be attributed to them is erroneous. This Court in ***Manjit*** (supra) held that pending claims under the scheme must be closed. The respondents cannot claim any vested right under the scheme. Clause (x) of notification which was issued on 2 January 2004 states that discretion to accept the request for retirement will vest with the administration depending on the suitability of the wards for appointment in the same category as the employee. Therefore, the respondents cannot be brought within the purview of the exception merely because the claim was made before 27 October 2017.

21. Moreover, we also find that the individual cases of the respondents' do not hold any merit. In the appeal arising out of SLP (C) No 1417 of 2019, the respondent was found to be medically unfit for the post of trackman under the LARSGESS scheme. The basis of the claim of the respondent originates in the order of the Tribunal dated 1 April 2016. The Tribunal proceeded on the basis that though the respondent was found unfit for the post of Trackman, he was medically fit for any CEE ONE post and posts below. After due consideration, appointment was denied by a letter dated 31 May 2016 on the ground that the ward of an employee can be considered under the LARSGESS scheme only in the lowest recruitment grade of the 'respective category' of the employee seeking retirement. As a matter of fact, clause (6) of para 2 of the letter of the Railway Board dated 2 January 2004 clearly stipulates that:

"The ward will be considered for appointment only in the lowest recruitment grade of the respective category from which the respective category from which the employee seeks retirement, depending upon his/her eligibility and suitability, but not in any other category."

22. On 11 September 2010, when the Railway Board decided to extend the benefit of the scheme to other safety categories of staff with the grade pay of Rs 1800 per month, it was envisaged that save and except for certain modifications inter alia in regard to the categories and the period of qualifying service, the other terms and conditions of the scheme will remain unchanged. The respondent's father was a Trackman. For the respondent to have been appointed under the scheme, he must have fulfilled the criteria for the appointment to the category in which his father was serving. Therefore, in terms of the scheme, though the respondent fulfilled the medical criteria requirement for some other posts, he could not be considered for appointment. It is clearly evident that on the plain terms of the scheme as it stood, the case of the respondent did not fulfil the criteria envisaged in the scheme.

23. In the companion appeal which arose from SLP (C) No. 906 of 2021, an application was submitted on 2 December 2010 by the father of the respondent seeking employment for his son, which was received by the Department on 7 December 2010. There was an endorsement on the letter, as noted by the High Court to the effect that there was no pending vigilance case against the respondent's father but the date of birth was mentioned incorrectly as 16 February 1954 instead of 16 December 1954. The application was rejected on the ground that he had crossed 57 years as on the cut-off date. It appears that this mistake was realized and another application was submitted on 28 January 2014 mentioning the correct date of birth. The Tribunal rejected his application on the ground that even assuming that the date of birth was 16 December 1954, the respondent's father had as on the cut-off date crossed the age of 57 years. On appeal, the High Court held that even assuming that a wrong date of birth had been mentioned, the date of birth of the respondent's father should be reckoned as 16 December 1954, in which event the application was not barred by time. The divergence in the views of the Tribunal and the High Court was because the Tribunal had considered the eligibility with respect to the second application of the respondent made in 2014 while the High Court considered it against the first application made in 2011.

24. The respondent submitted that according to the notification issued by the Ministry of Railways on 29 March 2011, the recruitment process under LARSGESS scheme must be done twice in a year according to the fixed time schedule. It was submitted that according to the time schedule, the cut-off date for determining the eligibility of the employee and their ward was 1 January for the first half; and the last date for receiving applications was 31 January. For the second half of JulyDecember, the cut-off date was 1 July; and the last date for receiving applications was 31 July. The first application of the respondent was submitted on 2 December 2010. According to the appellant, the first application was submitted by the respondent's father even before the LARSGESS Scheme was notified. The reliance of the respondent on the notification of 29 March 2011

to justify the application is erroneous. Clause (2) of the notification states that the process of retirement/recruitment may be started from July 2011 for the calendar year of 2011. This is evident from the letter dated 11 April 2011 where the application submitted by the respondent's father was rejected on the ground that he would be 57 years 4 month 14 days old as on the cut-off date of 30 June 2011. Further, the Divisional Office of Southern Office issued a notification on 30 June 2011 stating that the last date for receipt of application is 31 July 2011 and that all those applications submitted prior to the circular would not be considered. On the rejection of the application of the respondent's father on 11 April 2011, a fresh application ought to have been filled before 31 July 2011, mentioning the correct date of birth. However, the respondent filled the second application on 28 January 2014, nearly 3 years later when he was 59 years and 15 days as on the cut-off date of 1 January 2014. When he submitted his second application, he had already superannuated and was above the age criteria of 57 years.

25. The Tribunal in the present case dismissed the OA filed by the respondent noting that the constitutional validity of the scheme was suspect and that moreover the father of the respondent had retired on attaining the normal age of superannuation. On a considered view of the matter, we hold that there was no error in the judgment of the Tribunal. We have addressed in detail the history of the LARSGESS scheme and the doubt expressed on its validity by the Division Bench of the Punjab and Haryana High Court in ***Kala Singh*** (supra) which eventually led to the decision of the Union government to terminate the scheme. While noticing the above backdrop, the three judge Bench of this Court in ***Manjit*** (supra) clearly noted that the Scheme provided an avenue for backdoor entry into service and was contrary to the mandate of Article 16 which guarantees equal opportunity in matters of public employment. In this backdrop, the impugned judgment of the High Court of Madras issuing a mandamus for the appointment of the respondent cannot be sustained.

26. We accordingly allow the appeals and set aside the judgments of the Madurai Bench of the Madras High Court dated (i) 21 March 2018 in WP (MD) No. 5046 of 2018; and (ii) 3 September 2019 in WP (MD) No. 6452 of 2018 and companion cases. The writ petitions filed by the respondents before the High Court shall stand dismissed. There shall be no orders as to costs. Pending application(s) if any stands disposed.

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