IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 15th OF SEPTEMBER, 2025

WRIT PETITION No. 8083 of 2019

PUSHPA TIWARI
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Rohit Sohgaura - Advocate for the petitioner.

Ms. Supriya Singh -Dy. Govt. Advocate for the respondents / State.

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O R D E R

By way of this petition the petitioner has put to challenge the order Annexure P-9 whereby the representation of the petitioner for calculation of previous services rendered in private school has been rejected. Further challenge is made to order Annexure P-10 dated 30.12.2015 whereby the State Government has withdrawn the circular dated 27.08.1982/01.09.1982 in the matter of reckoning of past services rendered by the teachers absorbed from Janpad Sabha/local authorities/non-government schools.

2. The facts of the case are not at all in dispute. The petitioner was undisputedly appointed as teacher in a private school known as Janta Higher Secondary School, Rewa on 1.8.1975. The said school was taken over by the State Government vide order Annexure P-3 dated 13-12-1996 and the services of three teachers were taken over by the absorption order

which are Anusuiya Tiwari, Raghuvar Prasad Tiwari and the petitioner Pushpa Tiwari.

3. The other teacher namely Raghuvar Prasad Tiwari has admittedly been granted the benefit of calculation of past services rendered in the said school for the purpose of pension and this is not Disputed. The PPO issued to said Raghuvar Prasad Tiwari is on record as Annexure P-11 whereby his services have been counted right from the year 1970 for the purpose of calculation of pension.

4. The petitioner has also undisputedly paid an amount of Rs.1,16,011/- in Government Treasury towards the Contributory Provident Fund which was deducted from the petitioner and part contributed by her employer and the said amount of Rs.1,16,011/- has been paid to Government Treasury vide Annexure P-4 in November 2015. The services of the petitioner for the purpose of calculation of pension have been counted from the date of takeover i.e. 1996 till the date of her ultimate retirement which took place on 31.07.2016.

5. The State Government had been taking over the services of non-government teachers by taking over the non-government institutions since a long time though the said practice has now been discontinued after the year 2002. The State Government initially issued a circular dated 21.01.1972 in the matter of takeover of the services of teachers working in schools run by Janpad Sabha/local authorities which was in view of the fact that the services under the Janpad Sabha/ local authorities were pensionable services and detailed instructions were issued that in what manner the previous services would be counted for the purpose of calculation of pensionary benefits. As per Clause (ब) of the circular dated 21.01.1972 it

was provided that if the previous services of the teacher are governed by Contributory Fund Scheme then upon returning the entire CPF contribution along with interest, the services would be reckoned to be calculated for the purpose of pension when the employee ultimately retires from the State Government.

6. The aforesaid circular was later on succeeded by another circular dated 27.08.1982/01.09.1982 whereby the scope of circular of 1972 was enlarged to include non-governmental institutions also and by keeping other terms and conditions of circular of 1972 unchanged, the scope was enlarged to schools being run by non-governmental institutions also and now the result of the circular dated 27.08.1982/01.09.1982 was that upon takeover of the schools of Janpad Sabha/local authorities as well as those of private institutions upon the services of the teachers being absorbed in services of the State Government, the previous services would be counted for pension which was rendered in such schools prior to they being taken over by the State Government. It was in light of the circular of 1982 that the services of the other teacher namely Raghuvar Prasad Tiwari have been counted from the initial date of appointment in the private school and his pensionable services have been calculated right from the year 1972 whereas in the case of petitioner, such calculation of past services has been denied because by the time of absorption of petitioner, circular Annexure P-10 had been issued by the State.

7. The aforesaid circular has been criticized by the learned counsel for the petitioner on the ground that it creates class within class because a person who retires prior to 30.12.2015 would not be entitled to count his past services rendered in the private schools and a person who had retired prior to 30.12.2015 would be entitled to count his prior services. It is

contended that there is no objective sought to be achieved by this artificial discrimination and circular Annexure P-10 either may be set aside or be read down to this extent. The glaring example of the same school was quoted whereby upon Raghuvar Prasad Tiwari retiring in the year 2011, his past services have been counted while the petitioner retired after 30.12.2015, her past services have not been counted, though both were employed in the same private school and absorbed on the same date in Government service.

8. *Per contra*, learned counsel for the State has argued that there is nothing wrong in the circular Annexure P-10 because the circular of 1982 had been wrongfully issued without any reasoning or justification. This is because there is as such no obligation of the State towards payment of pension to teachers who were working in private institutions prior to take over. They would be paid pension if from the date of take over till the date of attaining the superannuation they earn any right to get pension and the State is under no obligation to pay pension to such teachers by calculating their past services rendered in the private societies which were not controlled by the State in any manner and the petitioner cannot force the State to calculate the past services.

9. Heard.

10. So far as the substantive challenge to circular (Annexure P-10) dated 30.12.2015 is concerned, in the opinion of this court, the petitioner has failed to establish any substantive right to calculate her past services rendered in the private school because the pension in Government services are governed by M.P. Civil Services (Pension) Rules, 1976 and there is no provision in the said pension rules to count past services rendered in a private institution.

11. As per Rule 12 qualifying service commences from the date employee takes charge of the post to which he is first appointed either substantively or in officiating or temporary capacity and when read with Rule 13 the service of Government servant shall not qualify unless his duties and pay are either regulated by the Government or under conditions determined by the Government. It is further made clear by Rule 13 that service means service against a post under the Government and paid by the Government and such service which has not been declared non-pensionable.

12. Rule 14 relates to counting of service of probationer, Rule 15 relates counting of services rendered as apprentice, Rule 16 relates to counting of service rendered on contract basis, Rule 17 relates to counting of pre-retirement civil services in case of re-employment and Rule 18 relates to counting of previous military service, Rule 19 relates to counting of war service in World War-II and similar is the provision in Rule 20. Rule 21 relates to counting of leave period, Rule 22 relates to counting of training period and Rule 23 relates to counting of suspension period.

13. The services rendered under a private employer to be counted for calculation of reckoning of pension by the Government is nowhere contemplated in M.P. Civil Services (Pension) Rules, 1976 and if the State Government had decided to grant some benefit to private schools in the year 1982 and the said benefit has been withdrawn in the year 2015, no substantive right of the teachers has been violated because no such substantive right flowed from Rules framed under Article 309 of Constitution of India i.e. the Pension Rules of 1976.

14. However, at the same time it cannot be ignored that the services of the petitioner were taken over by the State Government at the time when

circular dated 17.08.1982/01.09.1982 was in operation. Therefore, the service conditions of the petitioner upon absorption were determined by the said circular which was duly applicable when the petitioner's services were absorbed. The private schools may have accepted or consented to take over only upon some package offered to them by the State and this included the package of counting of past services for the purpose of pension of their teachers. It would have been a different matter if the parties had not changed their positions as per the circular of 1982. On the other hand, it is a case where position of the parties has been retrievably be altered by takeover of the private schools and it is highly possible that the consent for takeover might have been given by the said private schools by considering the totality of the facts and circumstances and conditions as available on the date of takeover which included calculation of past services for the purpose of pension by the teachers.

15. The State Government was well within its authority to have withdrawn the circular of 1982. However, the said withdrawal should not affect those teachers like the petitioner whose services have been taken over while the circular of 1982 was in operation and where the parties had acted upon and done something during the period the said circular was in operation, that amounts to change of their respective positions by take-over of school and absorption of services.

16. In doing so, the respondents have given retroactivity to the circular Annexure P-10 because the circular Annexure P-10 when applied to those teachers who have been absorbed prior to date of issuance of the said circular then it would amount to change of conditions of absorption of such teachers which would take place retrospectively in the year 2015 whereas

they stood absorbed in the State Government services much prior to 2015 and in the case of petitioner, the absorption took place in the year 1996.

17. Not only this, but the State has created class within class inasmuch as the teachers of the same school who will be retiring before 30.12.2015 will get the benefit of calculation of past service whereas those who have retired after 30.12.2015 will not get benefit of calculation of past services it will only lead to creating class within class and discrimination which has no nexus with the objective to be achieved. It is settled in law that the State can create discrimination only so long as it has any nexus to the lawful objective sought to be achieved by the State, but in the present case creation of such distinction and discrimination has no nexus with any lawful objective to be achieved except reducing the financial burden on the State.

18. No doubt the State can reduce the financial burden but it has to be done in a lawful manner, not in an discriminatory manner.

19. In the case of ***All Manipur Pensioners Association Vs. State of Manipur, (2020) 14 SCC 625*** it has been held by the Hon'ble Apex court that once a date of retirement determines the rate of pension then it will amount to creation of class within class and having no nexus with any just objective to be achieved. It has been held that a valid classification is actually a valid discrimination and it has to some just objective to be achieved. The Hon'ble Apex Court has held as under:-

> ***8.*** *Even otherwise on merits also, we are of the firm opinion that there is no valid justification to create two classes viz. one who retired pre-1996 and another who retired post-1996, for the purpose of grant of revised pension. In our view, such a classification has no nexus with the object and purpose of grant of benefit of revised pension. All the pensioners form one class who are entitled to pension as per the*

pension rules. Article 14 of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid classification. However, a valid classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Therefore, whenever a cut-off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination therefore must necessarily be satisfied.

8.1. *In the present case, the classification in question has no reasonable nexus to the objective sought to be achieved while revising the pension. As observed hereinabove, the object and purpose for revising the pension is due to the increase in the cost of living. All the pensioners form a single class and therefore such a classification for the purpose of grant of revised pension is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off date for extension of benefits especially pensionary benefits. There has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit.*

8.2. *As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase in the cost of living. Increase in the cost of living would affect all the pensioners irrespective of whether they have retired pre-1996 or post-1996. As observed hereinabove, all the pensioners belong to one class. Therefore, by such a classification/cut-off date the equals are treated as unequals and therefore such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court. At this stage, it is required to be observed that whenever a new benefit is granted and/or new scheme is introduced, it might be possible for the State to provide a cut-off date taking into consideration its financial resources. But the*

> *same shall not be applicable with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision.*
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> ***9.*** *In view of the above and for the reasons stated above, we are of the opinion that the controversy/issue in the present appeal is squarely covered by the decision of this Court in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] . The decision of this Court in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] shall be applicable with full force to the facts of the case on hand. The Division Bench of the High Court has clearly erred in not following the decision of this Court in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] and has clearly erred in reversing the judgment and order of the learned Single Judge. The impugned judgment and order [State of Manipur v. All Manipur Pensioners' Assn., 2016 SCC OnLine Mani 22] passed by the Division Bench is not sustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. The judgment and order [All Manipur Pensioners' Assn. v. State of Manipur, 2005 SCC OnLine Gau 118 : (2005) 3 Gau LR 384] passed by the learned Single Judge is hereby restored and it is held that all the pensioners, irrespective of their date of retirement viz. pre-1996 retirees shall be entitled to revision in pension on a par with those pensioners who retired post-1996. The arrears be paid to the respective pensioners within a period of three months from today.*

20. So far as the teachers absorbed prior to issuance of circular Annexure P-10, the State Government is also estopped from applying the said circular to those teachers. This is because it would amount to changing the terms and conditions of absorption and takeover many years after absorption and takeover has taken place. In the case of **BCPP Mazdoor Sangh v. NTPC, (2007) 14 SCC 234** it has been held as under:-

> ***31.*** *The materials placed clearly show that Clause 14 referred to above is against public policy and contrary to Section 23 of the Contract Act as well as violative of Article 14 of the Constitution of India for the reason that undue influence was exercised by NTPC management and the selected candidates to accept the terms and conditions stipulated therein. By virtue of the aforesaid Clause 14, as pointed out earlier, the status of these public servants have been sought to be changed which is again violative*

of Article 14. In Mahabir Auto Stores v. Indian Oil Corpn. [(1990) 3 SCC 752] this Court has observed in para 18 that even in the field of public law, the persons affected should be taken into confidence.

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35. *The Government or its instrumentality cannot alter the conditions of service of its employees and any such alteration causing prejudice cannot be effected without affording opportunity of pre-decisional hearing and the same would amount to arbitrary and violative of Article 14. As pointed out earlier, in the case on hand, the employees are neither party to tripartite agreement nor they have been heard before changing their service condition. Therefore, the action of the management is violative of Article 14 of the Constitution of India. Similar view has been taken by this Court in H.L. Trehan v. Union of India [(1989) 1 SCC 764 : 1989 SCC (L&S) 246 : (1989) 9 ATC 650] . In para 11 of the judgment, this Court observed as under: (SCC pp. 769-70)*

> *"11. ... It is now a well-established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a government servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a government servant will offend against the provision of Article 14 of the Constitution. Admittedly, the employees of CORIL were not given an opportunity of hearing or representing their case before the impugned circular was issued by the Board of Directors. The impugned circular cannot, therefore, be sustained as it offends against the rules of natural justice."*

21. Here the doctrine of legitimate expectation can be pressed into service because the petitioner was absorbed in service that can be said to be under a legitimate expectation that she would be entitled to pension under the State by counting all past services.

22. A similar issue came up before the Hon'ble Supreme Court in the case of OCI Card holders who were subjected to withdrawal of certain privileges, and the Supreme Court while holding that such withdrawal would be applicable only to prospective holders of OCI cards, in the case of ***Anushka Rengunthwar* v. *Union of India*, (2023) 11 SCC 209** held as under :-

"52. However, what is necessary to be taken note is that the right which was bestowed through the Notification dated 11-4-2005 and 5-1-2009 insofar as the educational parity, including in the matter of appearing for the All India Pre-Medical Test or such other tests to make them eligible for admission has been completely altered. Though the notification ex facie may not specify retrospective application, the effect of superseding the earlier notifications and the proviso introduced to clause 4(ii) would make the impugned Notification dated 4-3-2021 "retroactive" insofar as taking away the assured right based on which the petitioners and similarly placed persons have altered their position and have adjusted the life's trajectory with the hope of furthering their career in professional education.

53. The learned Senior Counsel for the petitioners would in that context contend that since sub-section (2) to Section 7-B of the 1955 Act does not exclude the right under Article 14 of the Constitution, it is available to be invoked and such discrimination contemplated in the notification to exclude the OCI card-holders should be struck down. Article 14 of the Constitution can be invoked and contend discrimination only when persons similarly placed are treated differently and in that view the OCI card-holders being a class by themselves cannot claim parity with the Indian citizens, except for making an attempt to save the limited statutory right bestowed. To that extent certainly the fairness in the procedure adopted has a nexus with the object for which change is made and the application of mind by Respondent 1, before issuing the impugned notification requires examination.

54. As noted, the right of the OCI cardholders is a midway right in the absence of dual citizenship. When a statutory right was conferred and such right is being withdrawn through a notification, the process for withdrawal is required to demonstrate that the action taken is reasonable and has nexus to the purpose. It should not be arbitrary, without basis and exercise of such power cannot be exercised unmindful of consequences merely because it is a sovereign power. To examine this aspect, in addition to the contentions urged by the learned Additional Solicitor General we have also taken note of the objection statement filed with the writ petition.

55. Though detailed contentions are urged with regard to the status of a citizen and the sovereign power of the State, as already noted, in these petitions the sovereign power has not been questioned but the manner in which it is exercised in the present circumstance is objected. The contention of the learned Additional Solicitor General is that the intention from the beginning was to grant parity to the OCI cardholders only with NRIs. On that aspect as already noted above we have seen the nature of the benefit that had been extended to the petitioners and the similarly placed petitioners under the notifications of the year 2005, 2007 and 2009. The further contention insofar as equating the OCI cardholders to compete only for the seats which are reserved for NRIs and to exclude the OCI cardholders for admission against any seat reserved exclusively for the Indian citizens, across the board, even to the persons who were bestowed the right earlier, it is stated that the rationale is to protect the rights of the Indian citizens in such matters where State may give preference to its citizens vis-à-vis foreigners holding OCI cards. It is further averred in the counter that number of seats available for medical and engineering courses in India are very limited and that it does not fully cater to the requirement of even the Indian citizens. It is therefore contended that the right to admission to such seats should primarily be available to the Indian citizens instead of foreigners, including OCI cardholders.

56. Except for the bare statement in the objection statement, there is no material with regard to the actual exercise undertaken to arrive at a conclusion that the participation of OCI cardholders in the selection process has denied the opportunity of professional education to the Indian citizens. There are no details made available about the consideration made as to, over the years how many OCI cardholders have succeeded in getting a seat after competing in the selection process by which there was denial of seats to Indian citizens though they were similar merit-wise. ...

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62. Therefore it is evident that the object of providing the right in the year 2005 for issue of OCI cards was in response to the demand for dual citizenship and as such, as an alternative to dual citizenship which was not recognised, the OCI card benefit was extended. If in that light, the details of the first petitioner taken note hereinabove is

analysed in that context, though the option of getting Petitioner 1 registered as a citizen under Section 4 of the 1955 Act by seeking citizenship by descent soon after her birth or even by registration of the citizenship as provided under Section 5 of the 1955 Act, was available in the instant facts to her parents, when immediately after the birth of Petitioner 1 the provision for issue of OCI cards was statutorily recognised and under the notification the right to education was also provided, the need for parents of Petitioner 1 to make a choice to acquire the citizenship by descent or to renounce the citizenship of the foreign country and seek registration of the Citizenship of India did not arise to be made, since as an alternative to dual citizenship the benefit had been granted and was available to Petitioner 1 and the entire future was planned on that basis and that situation continued till the year 2021.

63. Further, as on the year 2021 when the impugned notification was issued Petitioner 1 was just about 18 years i.e. full age and even if at that stage, the petitioner was to renounce and seek citizenship of India as provided under Section 5(1)(f)(g), the duration for such process would disentitle her the benefit of the entire education course from pre-school stage pursued by her in India and the benefit for appearing for the Pre-Medical Test which was available to her will be erased in one stroke. Neither would she get any special benefit in the country where she was born. Therefore in that circumstance when there was an assurance from a sovereign State to persons like that of Petitioner 1 in view of the right provided through the notification issued under Section 7-B(1) of the 1955 Act and all "things were done" by such Overseas Citizens of India to take benefit of it and when it was the stage of maturing into the benefit of competing for the seat, all "such things done" should not have been undone and nullified with the issue of the impugned notification by superseding the earlier notifications so as to take away even the benefit that was held out to them.

64. Therefore, on the face of it the impugned notification not saving such accrued rights would indicate non-application of mind and arbitrariness in the action. Further in such circumstance when the stated object was to make available more seats for the Indian citizens and it is demonstrated that seats have remained vacant, the object for which such notification was issued even without saving the rights and

excluding the petitioners and similarly placed OCI cardholders with the other students is to be classified as one without nexus to the object. As taken note earlier during the course this order, the right which was granted to the OCI cardholders in parity with the NRIs was to appear for the Pre-Medical Entrance Test along with all other similar candidates i.e. the Indian citizens. In a situation where it has been demonstrated that Petitioner 1 being born in the year 2003, has been residing in India since 2006 and has received her education in India, such student who has pursued her education by having the same "advantages" and "disadvantages" like that of any other students who is a citizen of India, the participation in the Pre-Medical Entrance Test or such other Entrance Examination would be on an even keel and there is no greater advantage to Petitioner 1 merely because she was born in California, USA. Therefore, the right which had been conferred and existed had not affected Indian citizens so as to abruptly deny all such rights. The right was only to compete. It could have been regulated for the future, if it is the policy of the Sovereign State. No thought having gone into all these aspects is crystal clear from the manner in which it has been done.

65. In the above circumstance, keeping in view, the object with which the Act, 1955 was amended so as to provide the benefit to Overseas Citizen of India and in that context when rights were given to the OCI cardholders through the notifications issued from time to time, based on which the OCI cardholders had adopted to the same and had done things so as to position themselves for the future, the right which had accrued in such process could not have been taken away in the present manner, which would act as a "retroactive" notification. Therefore, though the notification ex facie does not specify retrospective operation, since it retroactively destroys the rights which were available, it is to be ensured that such of those beneficiaries of the right should not be affected by such notification. Though the rule against retrospective construction is not applicable to statutes merely because a part of the requisite for its action is drawn from a time antecedent to its passing, in the instant case the rights were conferred under the notification and such rights are being affected by subsequent notification, which is detrimental and

the same should be avoided to that extent and be allowed to operate without such retroactivity.

66. We note that it is not retrospective inasmuch as it does not affect the OCI cardholders who have participated in the selection process, have secured a seat and are either undergoing or completed the MBBS course or such other professional course. However, it will act as retroactive action to deny the right to persons who had such right which is not sustainable to that extent. The goal post is shifted when the game is about to be over. Hence we are of the view that the retroactive operation resulting in retrospective consequences should be set aside and such adverse consequences is to be avoided.

67. Therefore in the factual background of the issue involved, to sum up, it will have to be held that though the impugned Notification dated 4-3-2021 is based on a policy and in the exercise of the statutory power of a Sovereign State, the provisions as contained therein shall apply prospectively only to persons who are born in a foreign country subsequent to 4-3-2021 i.e. the date of the notification and who seek for a registration as OCI cardholder from that date since at that juncture the parents would have a choice to either seek for citizenship by descent or to continue as a foreigner in the background of the subsisting policy of the Sovereign State*.*

68. In light of the above, it is held that Respondent 1 in furtherance of the policy of the Sovereign State has the power to pass appropriate notifications as contemplated under Section 7-B(1) of the Citizenship Act, 1955, to confer or alter the rights as provided for therein. However, when a conferred right is withdrawn, modified or altered, the process leading thereto should demonstrate application of mind, nexus to the object of such withdrawal or modification and any such decision should be free of arbitrariness. In that background, the impugned Notification dated 4-3-2021 though competent under Section 7-B(1) of Act, 1955 suffers from the vice of non-application of mind and despite being prospective, is in fact "retroactive" taking away the rights which were conferred also as a matter of policy of the Sovereign State.

69. Hence, the notification being sustainable prospectively, we hereby declare that the impugned portion of the notification which provides for supersession of the notifications dated 11-4-2005, 5-1-2007 and 5-

1-2009 and the clause 4(ii), its proviso and Explanation (1) thereto shall operate prospectively in respect of OCI cardholders who have secured the same subsequent to 4-3-2021.

70. We further hold that the petitioners in all these cases and all other similarly placed OCI cardholders will be entitled to the rights and privileges which had been conferred on them earlier to the Notification dated 4-3-2021 and could be availed by them notwithstanding the exclusion carved out in the Notification dated 4-3-2021. The participation of the petitioners and similarly placed OCI cardholders in the selection process and the subsequent action based on the interim orders passed herein or elsewhere shall stand regularised."

(Emphasis supplied)

23. The said judgment was cited with approval in ***Pallavi Vs. Union of India, (2023) 18 SCC 478***, in the following manner:-

19. *It is evident that the ruling held that Notification (dated 4-3-2021) operated arbitrarily because firstly it indicated non-application of mind in not saving accrued rights. The application of proviso to Clause 4(ii) of the Notification of 4-3-2021 was held to have no nexus with the objects sought to be achieved. The Court also held that those who are born prior to 2005 and residing in India had received their education in India and had pursued by having some advantages and disadvantages like other children who are citizens of India, and could not be denied their right to participate in NEET examinations or such similar examinations. It was also held that no additional advantage was granted to such class of people merely because they were born abroad and importantly, the Court took note of the amendment which introduced concession to OCI cardholders.*

20. *Therefore, the Court concluded that when the right conferred was withdrawn and altered, in the process leading to such change, should demonstrate application of mind, nexus to the object of such withdrawal or modification and any such decision had to be free of arbitrariness. In the light of this conclusion, the Court held that the notification saved from the vice of non-application of mind and was in fact retroactive. It was in these circumstances that the Court held that only those persons who*

obtained OCI cards after 4-3-2021 were rendered ineligible in terms of the notification.

21. *In the present case, although the OCI card relied upon by the petitioner on 4-8-2022, the fact that she was in fact issued the OCI registration card first, on 2-11-2015. In such circumstances, the petitioner's eligibility to claim the benefit of OCI cardholder in terms of the ruling in Anushka [Anushka Rengunthwar v. Union of India, (2023) 11 SCC 209] is undeniable. The rejection of her candidature at this stage i.e. on 19-6-2023 is not supportable in law. She is consequently directed to be considered in remaining counselling rounds by AIIMS and all participating institutions for PG Medical seats. It is clarified that the consideration would be regarding seats that are unfilled on the date of this judgment whether reserved for SC/ST/OBC or other categories and such as specially earmarked for Bhutanese candidates, etc. if they can be filled by other candidates, like her. Furthermore, this facility should be open to the petitioner as well as other candidates based upon the available records of those issued OCI cards prior to 4-3-2021 and who can participate in such counselling having regard to their performance in the NEET test, and their ranking.*

24. It is also relevant to note here that even the NCTE which has been coming out with amendment regulations in the matter of teachers' qualification from time to time has recognized the position that those who have obtained qualifications prior to amendment in regulations cannot be held to be disqualified and therefore, in the revised regulations of NCTE, provision is made that those having obtained qualifications prior to a particular date or at the time of enforcement of some prior regulations to be having different requisite qualifications. The purpose is only to keep the candidates who took admission in the courses which were valid at a particular point of time to be kept eligible for consideration to be employed and to avoid retrospective operation of such requirements.

25. Therefore, while upholding the validity of the order dated 30.12.2015 (Annexure P-10), it is held that the said order dated 30.12.2015 has to be read down to avoid retroactivity, so as not to operate against those candidates who had been absorbed prior to issuance of the said order.

26. Consequently, the petition is ***partly allowed*** with following directions:-

(i) Substantive challenge to order/circular Annexure P-10 dated 30.12.2015 is rejected.

(ii) The said circular is read down to the extent that it will not apply to those teachers who have been already taken over and absorbed in the services of the State Government prior to issuance of the said circular.

(iii) The petitioner would be entitled to count her pensionable service from 01.04.1983. The respondents shall be at liberty to verify whether the entire CPF contribution along with interest till date of remittance has been remitted in the State Government Treasury or not; and if any amount remains to be remitted, they would at liberty to demand that amount with interest till date of remittance of principal amount. This demand be made within 30 days of communication of this order.

(iv) The pension of the petitioner be accordingly revised after calculating her services from 01.04.1983 within 30 days from the date the petitioner deposits the balance amount, if any, or from 60 days of this order, whichever is later.

(VIVEK JAIN)
JUDGE

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