IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4821 of 2013

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Ram Sagar Rajak, S/O Late Sohrai Rajak R/O Village + Post Office- Amba, Police Station- Rahuie, District- Nalanda

.... Petitioner

Versus

1. The State Of Bihar through the Secretary, Scheduled Caste and Schedule Tribes, Welfare Department, Government of Bihar, Patna.
2. The Secretary, Bihar State Co-Operative Department, Government of Bihar, Patna.
3. The Registrar, Bihar State Co-Operative Department Government of Bihar, Patna.
4. The Bihar State Scheduled Caste Co-Operative Development Corporation Limited Through Its Managing Director, Malanil Bhawan, Budha Colony, Patna.
5. The District Welfare Officer-cum-Executive Officer, Purnea Bihar State Schedule Caste Co-Operative Development Corporation Ltd., Purnea.

.... Respondents

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Appearance:

For the Petitioner/s	:	Mr. Ranjeet Kumar, Adv.
	:	Mr. Jai Kishore Sharma, Adv.
For the Corporation	:	Mr. Ram Shankar Pradhan, Sr. Adv.
	:	Mr. Jainandan Kumar, Adv.
For the State	:	Mr. Ajay Bihari Sinha, G.A.-8
	:	Mr. Suryakant Kumar, A.C. to G.A.-8

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 02-08-2016

1. This is an application for setting aside the order No. Law 4/10 11-24 dated 28.09.2010, whereby and whereunder the representation of the petitioner for extension of age of superannuation from 58 years to 60 years has been rejected on the ground that the Secretary (Managing Director), Scheduled Caste and

Scheduled Tribes, Welfare Department, Government of Bihar, Patna has fixed the cut off date i.e. 31.05.2010 for grant of extended age of superannuation, whereas the petitioner has superannuated from the service on 30.04.2010. Further, prayer has been made to grant the benefit of extended age of superannuation of 60 years in light of Memo No.1500 dated 24.03.2005, issued by the Government of Bihar, thereby the benefit of extended age of superannuation from 58 years to 60 years has been given with effect from 24.05.2005 and the petitioner should not suffer on account laxity of the respondent-Corporation.

2. Filtering the unnecessary facts, the petitioner was working as Field Organizer in the Bihar State Scheduled Caste Co-operative Development Corporation Limited (hereinafter to be mentioned as "*the Corporation*") and was posted at district-Katihar. The date of birth of the petitioner has been recorded as 09.04.1952 and was discharging the duty to the satisfaction of his higher officers.

3. The Corporation has not framed any Rule, Regulation and bye-laws dealing with the service conditions of the employees of the Corporation, incorporated under Bihar and Orrisa Co-operative Act, the Board of Directors of the Corporation vide its Resolution dated 05.01.1979 (Agenda No.8) decided to follow the Government

Rules and Instructions until the Corporation frames its own Rules and Instructions. The age of the superannuation for the employees of the Corporation was fixed at 58 years as like the employees of the State of Bihar. The Government of Bihar made amendment in Rule 73 of the Bihar Service Code vide Resolution No.15000 dated 24.03.2005, thereby the age of superannuation of the employees of the State of Bihar has been enhanced from 58 years to 60 years.

4. Claim has been made that *ipso facto* enhanced age of superannuation of the employees of the State of Bihar from 58 to 60 years would be treated to have been extended to employees of the Corporation, but contrary to the provisions of the Bihar Service Code the Corporation continued to superannuate its employees at the age of 58 years. Basically, the petitioner has claimed that on account of amendment in the Bihar Service Code, thereby age of superannuation of the employee of the Corporation has been enhanced. Claim has been made that the petitioner has wrongly been made to superannuate at the age of 58 years.

5. It has been submitted that some of the employees of the Corporation had requested the authority for extension of age of superannuation, on refusal, they approached this Court in *C.W.J.C. No.10430 of 2009 (Braj Bhushan Prasad vs. The State of Bihar and*

Ors.) and analogous cases, there the identical claim was made to grant them benefit of the extended age of superannuation of 60 years in light of the decision of the Board of Directors of the Corporation dated 05.01.1979 inasmuch as the amendment effected in the Rule 73 of the Bihar Service Code by the State of Bihar.

6. This Court in C.W.J.C. No.10430 of 2009 vide order dated 13.05.2010 directed the Administrator of the Corporation to consider the enhancement of the age of superannuation of the employees of the Corporation from 58 years to 60 years in light of Service Rules prevailing in the Corporation, but such decision could not be taken by the Administrator as the Administrator was removed by the State Government. The Board of Directors of the Corporation being not in office, the Managing Director was not feeling confident to grant benefit of extended age of superannuation to the employees of the corporation in light of its resolution dated 05.01.1979 and amendment effected in the Bihar Service Code by the State Government. As neither the Administrator nor the Board of Directors of the Corporation was in office, it was directed that the Managing Director would consider the case of the petitioners in the 1st three writ applications including the employees' union for the grant of benefit of extended age of superannuation from 58 years to 60 years in light of the decision of the Board of Directors of the Corporation dated 05.01.1979 read with Resolution of the State Government dated 24.03.2005.

7. This Court further directed the respondents to take decision in light of the order passed in the case of *Lala Nand Kumar and Ors. vs. the Bihar State Food and Civil Supplies Corporation Ltd. & Ors.,* reported in *2008(1) PLJR, 579* as early as possible, in any case within one month from the date of receipt/production of a copy of the order before the Managing Director of the Corporation. This Court also granted consequential benefits, thereby the office order bearing Memo No.517 dated 13.03.2009, directing superannuation of the employees of the Corporation at the age of 58 years until the Rules are framed being contrary to the Resolution of the Corporation dated 05.01.1979 was quashed. This Court further directed, as Ram Babu Ram and Sukhdeo Bhagat approached this Court before their superannuation will be entitled to salary from the date of superannuation till they attain the age of 60 years, but Braj Bhushan, who superannuated from service on 30.6.2009 and approached this Court on 21.8.2009 would be entitled for his salary with effect from 21.8.2009 until he attains the age of 60 years.

8. It will be relevant to quote paragraph No.5 of the aforesaid judgment, which reads as under:-

> *"5. Having heard counsel for the petitioners, the State and the Corporation it is evident that this Court under orders dated 3.9.2008 passed in C.W.J.C. Nos.7143 of 2007 and 15819 of 2007, Annexure-5 of C.W.J.C. No.11197 of 2009 directed the Administrator of the Corporation to consider the enhancement of the age of Superannuation of the employees of the Corporation from 58 to 60 years in the light of the service Rules prevailing in the Corporation but such decision could not be taken by the Administrator as the Administrator was removed by the State Government. The Board of Directors of the Corporation being not in office the Managing Director is not feeling confident to grant the benefit of extended age of superannuation to the employees of the Corporation in the light of its resolution dated 5.1.1979 and the amendment made in the Bihar Service Code under resolution of the State Government dated 24.3.2005. As neither the Administrator nor the Board of Directors of the Corporation is in office it is directed that the Managing Director should consider the case of the petitioners in the 1st three writ applications including the employees' union for grant of benefit of extended age of superannuation from 58 to 60 years in the light of the decision of the Board of Directors of the Corporation dated 5.1.1979 read with resolution of the State Government dated 24.3.2005, Annexures-1, 2 of C.W.J.C. No.10580 of 2009 and the order of the Cooperative Department bearing Memo No.1305 dated*

15.5.2006 in view of the law laid down by this Court in the Case of Lala Nand Kumar and Ors.(Supra) in accordance with law, as early as possible, in any case within one month from the date of receipt/production of a copy of this order before the Managing Director of the Corporation. Office order bearing Memo No.517 dated 13.3.2009, Annexure-12 of C.W.J.C. No.10580 of 2009 directing superannuation of the employees of the Corporation at the age of 58 years until the Rules are framed being contrary to the resolution of the Corporation dated 5.1.1979 is quashed."

9. The District Welfare Officer-cum District Executive Officer, Purnea informed the present petitioner that he would superannuate on 30.4.2010 on reaching the age of 58 years. So, the present petitioner approached this Court by filing C.W.J.C. No.12344 of 2010. This Court vide order dated 03.08.2010 directed the Managing Director of the Corporation to consider the case of the petitioner with respect to the enhancement of the age of superannuation from 58 years to 60 years in light of the earlier order passed by this Court. The Managing Director of the Corporation considered the case of the petitioner and refused to grant the relief of extended age of superannuation on the ground that cut off date for granting the extended age of superannuation has been fixed as 31.05.2010, whereas the petitioner superannuated from the service on 30.4.2010.

10. Learned counsel for the Corporation has raised two grounds; first that the writ petition itself is not maintainable as the Corporation has been incorporated under the Bihar and Orrisa Co-operative Act and in view of the judgment in the case of ***the Organizer, Dehri, C.D. & C.M. Union Limited vs. the State of Bihar and Ors.*** reported in ***2014(1) PLJR, 695***, wherein it has been held that the Cooperative Society is not State within the meaning of Article 12 of the Constitution of Indian and so much so that the order of the Administrator is not under challenge before this Court, but the order of the Managing Director is under consideration, in such a situation the petition itself is not maintainable.

11. Another point has been taken that even on merit the petitioner is not entitled for extended age of superannuation on account of the fact that the decision has been taken for enhancing the age of superannuation, but cut off date has been fixed as on 31.05.2010, the benefit of extended age of superannuation will be available to those who have superannuated on and after 31.5.2010, but before the cut off date the petitioner has superannuated from the service, and as such the petitioner is not entitled to the benefit of extended age of superannuation.

12. During the course of argument, this Court has directed the Corporation to produce the Resolution of 1979 on the basis of which the petitioner is claiming of adoption of Bihar Service Code as well as extension of age of superannuation on account of the amendment effect in Rule 73 of the Bihar Service Code. Accordingly, the Corporation through supplementary counter affidavit brought on record the Resolution of 1979.

13. Having considered the parties, now the question that has to be decided in the present case is from which date the employees of Bihar State Scheduled Caste and Schedule Tribes Development Corporation would get the benefit of extended age of superannuation from 58 years to 60 years. It will be relevant to examine the judgments which have been decided on this point earlier.

14. Similar type of question came for consideration in the case of ***Kameshwar Mahto & Anr. vs. The State of Bihar and Ors.*** reported in ***2005(4) PLJR, 498***, with respect to the employees of the Bihar State Food & Civil Supplies Corporation Limited, there also the age of superannuation was 58 years. In pursuance of the amendment by the State Government in Rule 73 of the Bihar Service Code, extending the age of superannuation from 58 years to 60 years, the employees of the Corporation claimed the benefit of extended age of 60 years. This Court has taken a point that the Corporation is a juristic person having independent and distinct legal entity that of State of Bihar. The conditions of service applicable to the State of Bihar employees will not automatically be applicable to the employees of the Corporation, may be the Corporation is State within the meaning of Article 12 of the Constitution of India. The Court was of the view that merely fact that in past, some of the service conditions of the State Government employees were made applicable to the Corporations' employees, that by itself would not make the decision in respect of the age of superannuation automatically applicable to the employees of the Corporation, it will be applicable only when the Corporation decides to enhance the age of superannuation of its employees not otherwise.

15. It will be relevant to quote paragraph No.10 of the aforesaid judgment, which reads as follows:-

> *"10. It is common ground that Corporation is a juristic person and an independent legal entity and therefore competent to regulate the service conditions of its employee. Merely the fact that in past, some of the service conditions of the State Government employees were made applicable to the Corporations' employees, that by itself shall not make the decision in respect of the age of superannuation automatically applicable to the employees of the Corporation. In the present case, Corporation has specifically decided not to enhance the*

age of superannuation, hence in my opinion the case of the petitioners shall not be governed by the resolution of the State Government."

16. In **Jai Narayan yadav & Ors. vs. The State of Bihar & Ors.,** reported in ***2007(3) PLJR, 706***, the question of enhancement of age of superannuation from 58 years to 60 years in terms of the amended Rule-73 of the Bihar Service was under consideration. After the amendment effected in the Bihar Service Code, the Board vide Resolution dated 30.04.2005 enhanced the age of superannuation from 58 years to 60 years and sent it for approval. The Chairman of Public Enterprises Bureau did not give any opinion on the issue except the fact that it advised the Housing Board to obtain opinion from the Department of Personnel and Training. The Department of Urban Development, Government of Bihar, examined the issue. The Deputy Secretary, Department of Housing, Government of Bihar, wrote a detailed letter No.360 dated 17.6.2006 to the Housing Board. In pursuance thereto, the Housing Board was coerced to annul its earlier decision of increasing the age of superannuation from 58 years to 60 years. This led to dispute, which came before this Court. The Court has taken note that the Board in its first meeting held in 1972 resolved that until Board frames its own Rules and Regulations laying down the service conditions of its employees, the provisions of Bihar Service Code or other Rules would be applicable with respect to the employees who were working under the newly constituted Board. Though the respondents have taken a plea of Regulation, but ultimately the Court has arrived to a finding that admittedly the Housing Board has not framed its own Rules and Regulations will be governed in terms of the Resolution dated 21.09.1972 on failure to establish any regulation governing the service conditions of the employees of the Housing Board. The Court was of the view that the Housing Board has not committed any illegality in enhancing the age of superannuation from 58 years to 60 years and thereby the order of annulment passed by the Housing Board was rejected.

17. It will be relevant to quote paragraph Nos. 15, 19 and 21 of the aforesaid judgments, which read as follows:-

> *"15. In the counter affidavit which has been filed by the Housing Board, the Housing Board has brought on record a letter dated 6.6.2006. This is a communication by the Managing Director to the Chairman of Public Enterprises Bureau. The letter categorically states that since there is no Regulation which has been made by the Board, therefore, in terms of the original resolution of the State Government taken in the year 1976, the terms and conditions of the Bihar Service Code is applicable to the employees of the Housing Board. Keeping that in*

mind since the State Government has brought out an amendment in Rule 73, therefore, the Board also had extended the benefit to its employees increasing the age of retirement to 60 years. This letter has significance because it is coming at the level of the Chairman of the Housing Board. The Chairman of the Housing Board has categorically stated in this communication that there is no Regulation with regard to the service conditions of the employees of the Housing Board but then feeble attempt was made on behalf of the respondents that this is the mischief which was sought to be created by the vested interest in the Housing Board. I would have readily accepted that submission but there are other indications also available to certify or corroborate the fact or the circumstances that there is no Regulation.

19. When there are so many evidences as well as judicial findings in this regard, it is very difficult for this Court to accept the stand taken by the Housing Board and reinforced by the State Government that in view of Regulation of 1987 the decision of the Housing Board to extend the age of retirement due to an amendment in Rule-73 of the Bihar Service Code was arbitrary and illegal. There are clear evidence to establish that there is no Regulation in place or in operation in Housing Board.

21. On failure on the part of the Housing Board as well as the State Government to establish that there is a Regulation which governs the service conditions of the *employees of the Housing Board the natural corollary is that the final resolution of the year 1976 about applicability of the Bihar Service Code to the employees of the Housing Board still continues to occupy the field. If that is the position then the Housing Board committed no wrong in increasing the age of retirement from 58 years 60 years. This court, therefore, has no option but to quash the direction contained in letter no.360 dated 17.6.2006 of the Deputy Secretary, Housing Department, Government of Bihar, which is Annexure-7 and consequently, the notification dated 27.6.2006 as well as the decision of the Board dated 3.11.2006 by virtue of which the age of retirement of the employees of the Housing Board have been reduced to 58 years is also quashed. The employees of the Housing Board shall continue to render service till the age of 60 years unless and until the Housing Board in its wisdom decides to formulate its regulation and enforce the same."*

18. The dispute of enhancement of age of superannuation with respect to the employees of the Bihar State Food & Civil Supplies Corporation Limited again came for consideration before this Court in the case of ***Lala Nand Kumar and Ors. vs. The Bihar State Food & Civil Supplies Corporation Limited & Ors***. reported in ***2008(1) PLJR, 579,*** the Corporation in its meeting dated 21st May, 1973, resolved that "until such time as the Service Code, Financial Rules etc. are framed by the Corporation, provisions made in the

Bihar Service Code applicable to the State Government employees be adopted for the employees of the Corporation". The Corporation issued Notification dated 29th July, 2006, thereby extending the age of superannuation of its officers and employees from 58 years to 60 years w.e.f. 29th July, 2006. The employees of the Corporation raised grievance to extend the benefit of age of superannuation from the date the officers and employees of the State Government having been given. The Court in paragraph No.5 has observed that the provisions contained in the said Code are not *ipso facto* applicable to the Corporation and accordingly, the provisions contained therein do not *ipso facto* regulate the conditions of service of the officers and employees of the Corporation. The Court has also taken note of the fact that if the Corporation has decided to accord the benefit of extension of age of superannuation from 29th July, 2006, the officers and employees of the Corporation who have reached the age of superannuation as was in vogue until 28th July, 2006, cannot ask the Corporation to grant the extension or ask for giving effect to the decision of enhancement with retrospective effect.

19. It will be relevant to quote some relevant portion of the said judgment, which read as follows:-

"7....Accordingly, if the Corporation decides to accord

benefit of extension of the age of superannuation from 29th July, 2006, the Officers and employees of the Corporation, who have reached the age of superannuation as was in vogue until 28th July, 2006, cannot ask the Corporation to grant the benefit of extension or ask for giving effect to the decision of enhancement with retrospective effect. Therefore, the one and the only thing that this Court is required to look at is whether the benefit of extension has been given to the appellants, writ petitioners and other similarly situated employees of the Corporation even without the notification dated 28th July, 2006. For that matter the one and the only thing that is to be looked at is the resolution of the Corporation dated 21st May, 1973.

8….the true meaning of the resolution, therefore, would be that until Service Code and Financial Rules are framed by the Corporation, the Bihar Service Code as applicable to the State Government employees shall apply to the employees of the Corporation. This resolution dated 21st May, 1973 admittedly had not been withdrawn until 29th July, 2006. Much prior thereto on 24th March, 2005 the service code was altered as regards the age of superannuation. By that time or even thereafter no Service Code or Financial Rules had been framed by the Corporation. While on and from 24th March, 2005 in terms of the Service Code as applicable to the State Government employees, the State Government employees became entitled to serve upto the age of 60 years, since by that time no service Code *or Financial Rules has been framed by the corporation, in terms of the resolution dated 21st May, 1973 the officers and employees of the Corporation became entitle to the same benefit.*

9....In the instant case also, the words "applicable to the State Government employees" have been used in the resolution dated 21st May, 1973 while adapting the provisions contained in the Bihar Service Code until such time the Service Code, Financial Rules etc. are not framed by the Corporation. Therefore, on 21st May, 1973 it was decided to make available to the officers and employees of the Corporation the changes that may be effected in the Service Code applicable to the State Government employees till such time the Corporation itself frames its Service Code and other financial Rules."

The aforesaid decision with respect to the enhancement of age of superannuation does not apply to the facts of the present case as it applies to its own peculiar facts and circumstances of case.

20. In the case of ***Arun Kumar Sinha vs. The State of Bihar & Ors***. reported in ***2008(4) PLJR, 449*** the same issue came for consideration before this Court, there the employees of Kiul-Badua-Chandan, Command Area Development Agency, Bhagalpur were claiming enhancement of age of superannuation on account of extension of age of superannuation to the employees of the State

Government, as the Agency, in its meeting dated 1.6.1983 categorically decided that till the service Rules and Regulations are framed and approved by the State Government the service condition applicable to the State Government employees shall be applicable to the employees of the agency. No Rule or Regulation governing the service condition was framed, so the Court has granted the benefit of extended age of superannuation. The Court was of the view that when the Rules and Regulations were not framed by the agency and Resolution itself speaks that the service conditions of the employees of the agency will be governed by the Rules and Regulations of the State Government, there is no justification not to enhance the age of superannuation. In this case, Rules and Regulations of the employees of the State Government was made applicable, but no where the applicability of Bihar Service Code was mentioned and that there is no provision that any future amendment will *ipso facto* applicable to the employees of the Agency. The Court in absence of such stipulation in Regulation, has arrived to a conclusion that the provisions of Bihar Service Code will be applicable in view of earlier decision taken by the Board of Directors to apply the service condition applicable to the State Government employees in the matter of relating to the employees of the agency.

21. It will be relevant to quote paragraph No.6 and 8 of the said judgment, which read as under:-

> *"6. Efforts has been made by the respondents in the counter affidavit which has been filed by them to justify the decision of enhanced age of retirement from 30.3.2007. They do not have any cogent explanation as to why it should be allowed to be done especially when even as of today their service regulation has not yet been framed or put in place. In absence of said regulation or rule the earlier decision taken by the Board of directors to apply the Bihar Service Code in matters relating to the employees of the respondents continues to be in place. Discrimination cannot be practiced by them by taking a stand that a decision has now been taken in anticipation of the Board's approval on 30.3.2007.*
>
> *8. Not only this issue of similar kind in relation to some other Boards and Corporations claiming benefit of enhanced age of retirement came up before a Division Bench of this court for consideration in the case of* ***Lala Nand Kumar and Ors. vs. The State of Bihar & Ors****. along with analogous cases reported in 2008(1) PLJR 579. The Court in similar circumstances had come to opine that till such time the service rules are formulated by the Corporation, the adoption of the earlier resolution of making applicable the service conditions of State Government employees or such other rules will entitle the employees to claim enhanced of age of retirement."*

22. The matter relates to enhancement of age of superannuation also came for consideration before this Court in the case of ***Braj Mohan Prasad vs. The State of Bihar and Ors.*** reported in ***2009(3) PLJR, 985***, where the petitioner was claiming the benefit of extension of age of superannuation alike to the employees of the State Government. The Court has taken note of the letter dated 31.10.2008, issued by the State Government in the Co-operative Department, to the Managing Director, conveying the decision of the State Government to enhance the age of retirement. The Court has extended the benefit alike to the employees of the State Government on the ground that in certain cases the benefit has been extended in view of the Resolution of the State Government, any other approach depriving the person from the benefit of enhancement of age of superannuation will be resulted into discriminatory treatment to the employees of the Public Sector Undertakings.

23. In the case of ***the Bihar State Pharmaceutical & Chemical Development Corporation Employees Union vs. The Bihar State Pharmaceutical & Chemical Development Corporation Limited & Ors.*** reported in ***2009(4) PLJR 519*** same issue of extension of age of superannuation with respect to the employees of the Corporation was under consideration before this Court, there the employees of the Corporation were also taking plea of Notification issued by the State Government dated 24.03.2005, extending the age of superannuation. Claim was made that no sooner that the State Government enhanced the age of superannuation in absence of any Regulations of the Corporation to the contrary by virtue of decision of the Board of Directors of the Corporation dated 22.4.1978, the enhanced age of superannuation in the Corporation automatically stood adopted with effect from the date the benefit has been extended to the employees of the State Government. Claim was rejected by the Court on the ground that enhancement of age of superannuation would entail certain additional monetary load to the Corporation; in a situation, when it was incapable to pay the salary to its employees**;** in such situation, the age of superannuation was enhanced with effect from 27.7.2007. The Court refused to grant the benefit of extended age of superannuation from the date the benefit was extended to the employees of the State Government.

24. It will relevant to quote paragraph Nos. 6, 10 and 11 of the said judgment, which read as follows:-

> *"6. It has been held in (2008) 5 SCC 1* ***(P. Venugopal vs. Union of India)*** *that age of superannuation is for the employer to fix and alter. Extension of age of superannuation and refusal to do so cannot be*

> *questioned on the grounds of deprivation of a right or privilege. "The view taken is that the employer has discretion to grant or not to grant such extension having regard to the interest of the employer or the establishment". It is the employer, who has to bear the additional burden that may occur by reason of such decision being taken and, therefore, the court should be careful and loath in easily interfering in such matter.*
>
> *10. This Court finds it very difficult to accept this argument as this would again result in imposition of financial burden which the Corporation as it is stated that it is not in a position to bear. The Court finds it difficult in the facts of the case to pass an order of the nature which shall impose any financial burden on the State Government by reason of any direction in* ***Kapil Hingorani case (supra)*** *to pay compensatory amount.*
>
> *11. Learned counsel for the petitioner lastly place reliance on a Bench decision of this Court in 2009(1) PLJR, 580* ***(Chandradeo Singh Vs. State of Bihar & Ors.)*** *when this Court with regard to Bihar Industrial Development Corporation has issued order for enhancement of the age of superannuation. The judgment sought to be relied upon is easily distinguishable on facts as in that case, no defence of financial stringency was taken on behalf of the Corporation."*

25. In the case of ***Bihar State Co-operative and Marketing Union Ltd. BISCOMAUN Bhawan, Patna, through its Secretary &***

Anr. vs. Mahesh Prasad Sharma, reported in ***2011(3) PLJR, 440,*** where identical issue was involved regarding date of effectuation of the enhanced age of superannuation in the BISCOMAUN. The Government of Bihar vide Notification dated 24.03.2005 amended the provisions of Rule 73 of the Bihar Service Code, thereby the age of superannuation of the Government employees was enhanced from 58 years to 60 years. As there was a demand from various other organizations to enhance the age similar to the employees of the Government of Bihar, the Co-operative Department issued letter No.1305 dated 15.05.2006 to BISCOMAUN to enhance the age of superannuation of its employees from 58 years to 60 years, which was considered by the Board of Directors in its meeting held on 2.11.2007 enhanced the age of superannuation from 58 years to 60 years. As the Managing Director did not take any interest to implement the decision, writ was filed and ultimately vide Resolution dated 30.07.2009 the age of superannuation of the employees of the BISCOMAUN was extended from 58 years to 60 years. By that time the petitioners of that case was superannuated, so the question arose of their entitlement of the benefit of enhanced age of superannuation. This Court held that when the BISCOMAUN has accepted the approval of the State Government and vide Resolution dated 02.11.2007 enhanced the age of superannuation; it will be an illegal action to make the enhancement of age from 30.07.2009. In conclusion, it has been held that employees would get the benefit of enhancement of age from the date the Board of Directors' decision with respect to the age of superannuation.

26. It will be relevant to quote paragraph No.5 of the aforesaid judgment, which reads as follows:-

> "*5. It is thus evident that the appellants have finally implemented its resolution enhancing the retirement age of its employees from 58 to 60 years after obtaining prior concurrence of the State Government. This, however, does not conclude matters.*
>
> *Primary question for consideration is the date from which the resolution shall be implemented, namely, w.e.f. 2.11.2007 or 30.7.2009. We are of the view that the decision to enhance the retirement age of its employees became effective w.e.f. 2.11.2007, the date on which the Board of Directors passed its resolution enhancing the age of retirement. We say so in view of the language and tenor of the resolution extracted hereinabove, and also for the reason that the Board of Directors authorized its Managing Director to take necessary steps for its implementation. As a dutiful servant of appellant no.1, he was duty bound to carry out the resolution of the Board of Directors promptly and with effect from the date of the resolution, but he completely failed to discharge this part of his duty and function. The employees cannot*

be allowed to suffer on account of inaction of functionary of appellant no.1. His inaction led to C.W.J.C.No.5387 of 2009, which was allowed, and the order of this court was implemented. The Managing Director once again made the error incorporating the clause "यह आदेश तत्काल प्रभाव से लागू होगा" in his order. We set aside the same and substituted by our order that the same, and directed that the order shall be implemented w.e.f. 2.11.2007, the date on which the Board of Directors passed the resolution. (emphasis supplied)"

So in this case, the Court has taken a view that from the date the BISCOMAUN has opted the enhancement of age will be date the commencement of granting the benefit of extended age of superannuation.

27. The question of enhancement of age of superannuation with respect to the employees of the Bihar State Export Corporation came for consideration before this Court in the case of ***Raj Mangal Raut vs. The State of Bihar through its Chief Secretary & Ors***. reported in ***2012(4) PLJR, 533,*** there the employees of the Bihar State Export Corporation claiming enhancement of age of superannuation on the ground of extension of age alike to the employees of the State Government in view of the amendment in Rule 73 of the Bihar Service Code. The Court rejected the plea of financial crunch and enhanced the age of superannuation on the ground of extension of age of superannuation to the employees of the State Government holding that otherwise it will be discriminatory.

28. It will be relevant to quote paragraph Nos. 8, 9, 11,12,14 and 15 of the said judgment, which read as follows:-

> *"8. On the other hand, learned counsel for the Corporation (respondent no.5) claimed that the Corporation had to work on the direction of the State Government as per the instruction sent by the authorities of the Government dated 10.12.2008 and 13.02.2012. He also referred to a decision of the Division Bench of this Court dated 18.11.2011 passed in LPA No.1558 of 2011 in which it was held that it was not possible for that Court to hold that Bihar Service Code as modified or altered from time to time is made applicable to the employees of the Corporation.*
>
> *9. Learned counsel for the State of Bihar and its authorities (respondent nos.1, 2, 3, 4, 6 and 7) stated that the State Government has laid down a policy pertaining to the enhancement of the age of the employees of Public Sector Undertaking of the State which was circulated through the Department of Finance letter No.177 dated 21.11.2008 and letter No.182 dated 25.11.2008 and under the said Policy retirement age of working employees of only those public sector undertaking can be enhanced from 58 years to 60 years which is in profit since 5 years and whose accumulated loss is liquidated. He also submitted*

that any proposal pertaining to the matter in issue is required to be examined under the condition of the aforesaid policy of the State Government.

11. Considering the entire facts and circumstances of this case as well as the arguments placed before this Court it is quite apparent that the decision of the Division Bench of this Court relied upon by learned counsel for the respondents, namely order dated 18.11.2011 passed in LPA No.1558 of 2011 is not applicable to the facts and circumstances of this case in as much as in the said decision it was held that unless a resolution passed by the Board of Directors of the Corporation provides that the provisions contained in the Bihar Service Code as amended from time to time shall apply to the employees of the Corporation, the contention cannot be countenanced and furthermore the appellant of the aforesaid case had already retired from service earlier after reaching the age of superannuation.

12. According to the aforesaid decision of the Division Bench of this Court it was for the Corporation to take a decision in that regard after amendment of the Government Rules regarding enhancing the age of superannuation and hence the claim of the respondent-Corporation that nothing can be done unless the Government decides to implement the age of superannuation of its employees to the employees of the Corporation also, miserably fails. Thus, it transpires that the authorities of the Corporation as well as the authorities of the State Government are merely trying to *pass the buck on each other without any intention to enhance the age of superannuation of the employees of the Corporation as per the amendment of the Government Rules.*

14. It is not in dispute that the State Government resolved to enhance the age of superannuation of its employees from 58 years to 60 years as far as back on 24.03.2005 and the said resolution was fully complied by amending the Rules vide Bihar Service (Amendment) Code, 2007 enhancing the age of its employees from 58 years to 60 years. Such Corporations, like respondent namely Bihar State Export Corporation, are legally considered to be an arm of governance by the State which has its legal entity having all such privileges as had been conferred on it by the Government through legislations etc. Hence, the Corporation cannot legally refuse to enhance the age of superannuation of its employees when the age of superannuation of the employees of the State Government had already been extended from 58 years to 60 years. (emphasis supplied)"

29. In the case of ***the state of Bihar through the Principal Secretary, Department of Industries & Ors. vs. Chandra Bhushan Choudhary and Ors***. reported in ***2016 (1) PLJR, 765,*** there the employees of the Bihar Khadi and Village Industries were claiming the enhanced age of superannuation with effect from the date of amendment of Rule 73 of the Bihar Service Code. In that case, the

State Government issued Memorandum dated 24.01.2012 enhanced the age of superannuation of the employees of the Board. Claim was made by the employees of the Corporation to give the benefit retrospectively with effect from the date the benefit has been extended to the employees of the State Government. In that case, the Board in its ordinary meeting held on 18.06.1958 took decision to follow the relevant rules of the State Government in respect of matter relating to disciplinary control over the subordinate staff and those regarding fixation and payment of salary, T.A., C.L.A. and other allowances pending finalization of Rule and Regulations of the Board. The Court was of the opinion that it was only confined to the disciplinary control over the subordinate and those regarding fixation and payment of salary. T.A. and C.L.A. and other allowances and the Court has held that no other Regulation was brought to indicate that the Board took decision to apply the service condition as applicable to the employees of the State Government to the employees of the Board and rejected the claim of enhancement of age from the date of applicability to the employees of the State Government.

30. It will be relevant to quote paragraph Nos. 9, 22 and 29, which reads as under:-

> ***"9.*** *Aggrieved by the said communication, as contained in letter No.1648, dated 15.05.2009, whereby the State*

Government had expressed disagreement with the proposal of the Board to enhance the age of superannuation of its employees from 58 years to 60 years and subsequent decision of the State Government, communicated through Memorandum No.427, dated 24.01.2012, allowing enhancement of age of superannuation of the employees of the Board, but with prospective effect, respondent No.1 approached this Court by filing an application, under Article 226 of the Constitution of India, giving rise to CWJC No.7888 of 2012, with a plea that service conditions (except pension), governing the employees of the State Government of Bihar, were applicable in toto to the employees of the Board. In support of his contention, the writ petitioner had relied upon an extract from the proceedings of 21st Ordinary Meeting of the Board held on 18.06.1958, which read thus:-

> *"14. To approve of the proposal to follow the relevant rules of the State Government in respect of Matters relating to desciplinary control over subordinate Staff and those regarding fixation and payment of salary T.A., C.L.A and other allowances to them from the date the State Board came into existence pending the finalization of the Rules and Regulations of the Board."*

22. *From the proceedings of 21st Ordinary Meeting of the Board, held on 18.06.1958, extracted above, what clearly surfaces is that the Board had approved the proposal to follow relevant Rules and Regulations of the*

> *State Government in respect of the matters,"* ***relating to disciplinary control over subordinate staff and those regarding fixation and payment of salary, T.A., C.L.A. and other allowances"****, pending finalization of the Rules and Regulations of the Board.*
>
> *29. Facts of the present case, as has been noted above, are entirely different. Mr. Lalit Kishore, learned Principal Additional Advocate General, appearing on behalf of the appellants, is correct in his submission that in the absence of any Regulation, framed in accordance with the Act or any decision taken by the competent authority, service conditions, as applicable to the State Government servants, could not have been made applicable to the employees of the Board."*

31. In the case of ***Barauni Refinery Pragatisheel Shramik Parishad vs. Indian Oil Corporation Ltd. and Others,*** reported in ***AIR 1990 SC 1801,*** there the Hon'ble Supreme Court held that upward revision of age of superannuation would put an additional financial burden on the management.

32. It will be relevant to quote paragraph No.10 of the said judgment, which reads as follows-

> *"10...<u>The argument that the upward revision of the age of superannuation will not entail any financial burden cannot be accepted. The High Court rightly points out: "workmen who remain in service for a longer period</u>*

> *have to be paid a larger amount by way of salary, bonus and gratuity than workmen who may newly join in place of retiring men". The High Court was, therefore, right in concluding that the upward revision of the age of superannuation would throw an additional financial burden on the management in violation of Clause 21 of the settlement…(emphasis supplied)."*

33. The Hon'ble Supreme Court in the case of ***A.K. Bindal vs. Union of India*** reported in ***2003(5) S.C.C. 163*** and in the case of ***Officers & Supervisors of I.D.P.L. vs. Chairman & M.D., I.D.P.L. and Others,*** reported in ***2003) 6 SCC 490,*** held that the employees of the Corporation are governed by their own Rules and Regulation cannot be compared with the employees of the State Government as always the employees of the Corporation get a benefit on the basis of its profit and loss which is not applicable to the employees of the State Government as the State Government has to run the administration and maintain the law and order. In such circumstances, the employees of the Corporation cannot compare and equate with the employees of the State Government.

34. It will be relevant to quote paragraph No.17 of *A.K. Bindal's case (supra),* which reads as follows:-

> *The legal position is that identity of the Government Company remains distinct from the government. The*

Government Company is not identified with the Union but has been placed under a special system of control and conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire share holding is owned by the Central Government will not make the incorporated company as Central Government. It is also equally well settled that the employees of the Government Company are not civil servants and so are not entitled to the protection afforded by Article 311 of the Constitution (Pyare Lal Sharma v. Managing Director AIR 1989 SC 1854). Since employees of Government Companies are not government servants they have absolutely no legal right to claim that government should pay their salary or that the additional expenditure incurred on account of revision of their pay scale should be met by the government. Being employees of the companies it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay scale, the petitioners cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay scales. It appears that prior to issuance of the Office Memorandum dated 12.4.1993 the Government had been providing the necessary funds for the management of Public Sector Enterprises which had been incurring losses. After the change in economic policy introduced in early nineties, Government took a decision that the

> *Public Sector Undertakings will have to generate their own resources to meet the additional expenditure incurred on account of increase in wages and that the government will not provide any funds for the same. Such of the Public Sector Enterprises (Government Companies) which had become sick and had been referred to BIFR, were obviously running on huge losses and did not have their own resources to meet the financial liability which would have been incurred by revision of pay scales. By the Office Memorandum dated 19.7.1995 the Government merely reiterated its earlier stand and issued a caution that till a decision was taken to revive the undertakings no revision in pay scale should be allowed. We, therefore do not find any infirmity legal or constitutional in the two Office Memorandums which have been challenged in the writ petitions.*

35. It will also be relevant to quote paragraph No.8 of *Officers & Supervisors of I.D.P.L's case (supra),* which reads as follows:-

> *8. We have carefully gone through the pleadings, the Annexures filed by both sides and the orders passed by the BIFR and the judgments cited by the counsel appearing on either side. Learned counsel for the contesting respondent drew our attention to a recent judgment of this Court in A.K. Bindal and Anr. v. Union of India and Ors., [2003] 5 SCC 163 in support of her contention. We have perused the said judgment. In our*

opinion, since the employees of government companies are not government servants, they have absolutely no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay-scales should be met by the Government, Being employees of the companies, it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay-scale, the petitioners, in our view, cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay-scales. We are unable to countenance the submission made by Mr. Sanghi that economic viability of the industrial unit or the financial capacity of the employer cannot be taken into consideration in the matter of revision of pay-scales of the employees.(emphasis supplied)"

36. In this background, it has to be seen that the Resolution, which has been taken by the Board of Directors with respect to its employees. It will be useful to quote some relevant portion of the Regulation, where it has been provided as under:-

" निर्णय लिया कि जिन मामलों में निगम का अपना नियमन हो और मामलों में निदेशक मडंल का स्पष्ट निर्णय हुआ हो या न हो सभी मामलों में इस संबंध में नियम बनाने का निर्णय लिये जाने तक संबंधित एवं लागू होने / किये जाने योग्य सरकारी नियमों एंव उपबधों को अगीकार दिया जाए एवं किया जाता है।"

37. On perusal of the aforesaid Regulation, it is evident that nowhere it has been mentioned about the applicability of Bihar Service Code and on earlier occasion, when the petitioner has approached this Court in C.W.J.C. No.12344 of 2010, this Court directed the Managing Director to consider the case of the petitioner in light of the order passed by this Court (attached as Annexure-3 to the writ application) and whereupon the Managing Director of the Corporation considered the case of the petitioner and refused to grant the relief of extended age of superannuation on the ground that cut off date for grant of extended age of superannuation has been fixed as 31.05.2010, whereas the petitioner superannuated from the service on 30.4.2010. With respect to the same issue, others employees of the Corporation approached this Court the Court in C.W.J.C. No.14812 of 2010 (Subhnath Paswan vs. State of Bihar and Ors.). This Court vide order dated 09.09.2010 refused to grant the benefit and eloquently held that the extension of age will be applicable with effect from 31.5.2005.

38. In view of the aforesaid discussions, this Court is of the view that the benefit of extension of age cannot be extended from the date the benefit has been extended to the employees of the State Government, but the employees of the Corporation will get the benefit of extended age of superannuation from the date fixed by the Corporation.

39. The second point that has been raised by the Corporation that writ petition is not maintainable as it is a Co-operative Society and the Cooperative Society is not the State within the meaning of Article 12 of the Constitution of India in view of the judgment of ***the Organizer, Dehri, C.D. & C.M. Union Limited (supra).*** This Court is not taking up the issue of maintainability of the writ application, which would be decided in any other case.

40. In view of the aforesaid discussions, this Court does not find any merit in this writ application. Accordingly, this writ petition is dismissed.

(Shivaji Pandey, J)

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