

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7702 of 2010

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1. Sri Mahendra Kumar Mishra S/O Late Bisheshwar Mishra Vill. & Town- Narayanpur, P.O. Sakri, P.S. Manigachhi, Distt.- Darbhanga
 2. Shri Umesh Kumar Singh S/O Shri Ram Brikh Singh Vill. & Town- Chainpur, P.O. Taraya, P.S. Taraya, Distt.- Chapra
 3. Shri Devendra Kumar S/O Late J.P.Singh Vill. & Town- Lakhansen, P.O. Rampur Mina, Ria-Bikhama Bazar, P.S. Baruraj, Distt.- Muzaffarpur
 4. Shri Syad Aftab Akhtar S/O Late Syad Razi Akhtar Vill. & Town- Chandbara (Azad Road), Distt.- Muzaffarpur
 5. Shri Mukteshwar Prasad Singh S/O Gajendra Narayan Singh Vill. & Town- Kalyanpur, P.O. & P.S.- Sahebpur Kamal, Distt.- Begusarai
 6. Shri Anwar Ahmad Farmood S/O Dr. Abdul Hakin Ansari Vill. & Town- Ekraha, P.O. Chamaka Via- Chopra Ramnagar, P.S. Jankinagar, Distt.- Purnea
 7. Shri Rajesh Kumar Verma S/O Late Shivji Prasad Verma Vill. & Town- Heropatti, P.O. Heropatti, P.S. Bisphi, Distt.- Madhubani
 8. Shri Priyabrat Narayan Singh S/O Sri Chandra Prabha Singh Vill. & Town- Barauda, P.O. Barauda, P.S. Paru, Distt.- Muzaffarpur
 9. Shri Manoj Kumar S/O Shri Parmanand Prasad Vill. & Town- Bathna, P.O. Bathna, P.S. Bairiya, Distt.- West Champaran
 10. Shri Raju Jha S/O Shri Sita Ram Jha Vill. & Town- Chagraha, P.O. Chapra, Nahash, P.S. Sugauli, Distt.- East Champaran
 11. Shri Dinesh Sharma S/O Late Parash Prasad Singh Vill. & Town- Chakmuni, P.O. Madhopur Raj Rai, P.S. Vaishali,



Distt.- Vaishali

12. Shri Lal Roy S/O Late Hiya Lal Roy Vill. & Town-
Hanumanagar, P.O. Hanumanagar, P.S. Sursand, Distt.-
Sitamarhi

13. Shri Suresh Prasad Singh S/O Chulhai Singh Vill. &
Town- Rasulpur, P.O. Jaitypur, P.S. Lalgang, Distt.- Vaishali

14. Shri Akhtar Ali Ansari S/O Late Pir Mohamod Ansari Vill.
& Town- Harpur Kothi, P.O. Pandipur, P.S. Jantabazar,
Distt.- Saran (Chapra)

15. Shri Sachidanand Kumar S/O Shri Rameshwar Prasad
Vill. & Town- Gurudyal Bigha, P.O. Mow-Bindi Dih Via-
Giriyak P.S. Silao, Distt.- Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar

2. The Principal Secretary, Finance Department, Govt. Of
Bihar, Patna

3. The Joint Secretary, Finance Department, Govt. Of Bihar,
Patna

4. The Addl. Finance Commissioner (Expenditure), Finance
Department, Govt. Of Bihar, Patna

5. The Deputy Secretary, Finance Deptt., Govt. Of Bihar,
Patna

6. The Joint Commissioner, Accounts Administration,
Provident Fund Directorate, Pant Bhawan, Bihar, Patna

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.8825 of 2010

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1. Binay Kumar S/O Late Bachchu Singh R/O Vill.-



- Bhimpura, P.S. Masaurhi, Distt.- Patna, At Present District Provident Fund Office Vaishali, Hazipur
2. Ajay Kumar Sinha S/O Late Kashinath Sinha R/O B/52 P.C. Colony, P.S. Kankarbagh, Distt.- Patna, At Present District Provident Fund Office, Munger
3. Satish Chandra Jha S/O Late Krishna Kant Jha R/O Vill.- Sarisab, P.S. Benipatti, Distt.- Madhubani, At Present Provident Fund Directorate, Patna
4. Vishwanath Gupta S/O Late Tarkeshwar Nath R/O Bibiganj Maida Toli, P.S. Danapur, Distt.- Patna, At Present Provident Fund Directorate, Patna
5. Ram Niwas Singh S/O Late Mukhlal Singh R/O Vill.- Chandi, P.S. Chandi, Distt.- Bhojpur, At Present Provident Fund Office, Ara
6. Anil Kumar Srivastava S/O Late Vijay Bahadur Lal R/O Vill.+P.S.- Sohratgarh, Distt.- Sidhyathnagar (U.P.) At Present District Provident Fund Office, Ara
7. Pankaj Kumar S/O Deojanam Singh R/O Kankarbagh-193, P.C.Colony, P.S. Kankarbagh, Distt.- Patna, At Present District Provident Fund Office, Hazipur
8. Chandra Mohan Singh S/O Late Sahdeo Singh R/O Bela Gopi, P.S. Gaighatt, Distt.- Muzaffarpur, At Present District Provident Fund Office, Motihari
9. Gopal Mishra S/O Sukhdeo Mishra R/O Puchati Kala P.S. Ekma, Distt.- Saran, At Present District Provident Fund Office, Ara
10. Rajeev Ranjan Singh S/O Govind Prasad Singh R/O Near Town Police Station, P.S. Aurangabad, Distt.- Aurangabad, At Present District Provident Fund Office, Jehanabad
11. Ramesh Rai S/O Mahendra Rai R/O Hetampur, P.S. Patodhi, Distt.- Samastipur, At Present District Provident Fund Office, Purnea
12. Akhileshwar Sharma S/O Late Brajnandan Singh R/O



D.V.C.Chowk, Old Jakkanpur, P.S. Jakkanpur, Distt.- Patna
At Present G.P.F.Directorate, Patna

13. Nand Lal S/O Hari Lal R/O Vill.- New Gangauli, P.S.
Dalmianagar, Distt.- Rohtas, At Present G.P.F. Directorate,
Patna

14. Mina Sinha D/O Late Dwarika Prasad Sinha R/O
Ashirvad Community Hall, Alamganj Chowki, P.S. Alamganj,
Distt.- Patna At Present G.P.F.Directorate, Patna

15. Amir Singh S/O Late Ram Chhabila Singh R/O Vill.-
Bhagwat Pur, P.S. Chandi, Distt.- Bhojpur, At Present G.P.F.
Office, Nawadah

16. Syed Md. Yusuf S/O Late Nurul Hasan Vill.- Tajpur, P.S.-
Tajpur, Distt.- Samastipur, At Present G.P.F. Office, Purnea

.... Petitioner/s

Versus

1. The State Of Bihar

2. The Secretary, Finance Department, Govt. Of Bihar,
Patna

3. The Joint Secretary, Finance Department, Govt. Of Bihar,
Patna

4. The Addl. Finance Commissioner (Expenditure), Finance
Department, Govt. Of Bihar, Patna

5. The Joint Commissioner, Accounts Administration,
Provident Fund Directorat, Pant Bhawan, Bihar, Patna

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.2796 of 2011

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1. Bihar Rajya Koshagar Snatak Lekha Karamchari Sangh,
Through Its General Secretary , Nandu Ram , Son Of ,



Ramrup Ram Accountant , Secretariate Treasury, Nirman Bhawan , Patna.

2. Kapindra Jha 'Kiran' S/O Late Awadh Narayan Jha Resident Of Vill . And. P.O. Narayan , Via Tulapatganj , Distt- Madhubani.

3. Paras Lal S/O Harinandan Baitha Resident Of Anisabad (Post Office Lane), P.O . Anisabad District -Patna-2., Accountant Gopalganj Treasury, Gopalganj.

4. Sohan Ram S/O Late Lalu Ram Resident Of Doranda Nai Mohalla , Ranchi-2 ,Accountant Gopalganj Treasury, Gopalganj.

5. Krishna Murari Prasad S/O Late Kesho Prasad Resident Of Block Colony, Aurangabad , P.S & Distt-Aurangabad , Accountant, Gopalganj Treasury , Gopalganj.

6. Dinesh Jha S/O Late Rohit Narayan Jha Resident Of Village - Hainthi Baly , P.O. Kothia, P.S. Bhairab Asthan , Distt. Madhubani , Accountant Gaya Treasury , Gaya,.

7. Neyaz Ahmad S/O Late Mahmood Alam At Present Resident Of Nagmatia Road , P.S. Civil Lines Gaya , Accountant Gaya Treasury , Gaya.

8. Chandra Deo Jha S/O Late Dhaneshwar Jha Resident Of Bishnupur , P.O. Baika Bishnupur , Distt.Madhubani, Accountant Gaya Treasury , Gaya.

9. Kishore Kumar Choudhary S/O Late Bijay Kant Choudhary Resident Of Naya Tola , Bhikjjanpur , P.S.Kotwali , Distt- Bhagalpur , Accountant Gaya Treasury , Gaya.

10. Kumar Digvijay Singh S/O Late Basudeo Singh Resident Of Vill. & P.O. Guthani , Via Mairwa , Distt. Siwan, Accountant , Gaya Treasury , Gaya.

11. Bijay Kumar Sinha S/O Late Yogendra Pd. Sinha Resident Of Mohalla Gandhipura , P.O. Sahay Nagar , Rupaspur , Distt- Patna, Accountant Arrah Treasury , Arrah.



12. Ramesh Pd. Singh S/O Late Satyadeo Pd. Singh
Resident Of Mohalla Jamunia P.O Sardiha , P.S. Simri ,
Bhakhtiyarpur , Distt- Saharsa , Accountant Arrah Treasury
, Arrah.

13. Bishwanath Pd. Gupta S/O Late Chand Lal Resident Of
Mohalla C/30, Mitra Mandal Colony , Saket Vihar , Patna- 2 ,
Accountant Arrah Treasury , Arrah.

14. Ved Prakash S/O Late Ram Balak Singh Resident Of
Mohalla Lohanipur West,P.S. Kadamkuan , Dist- Patna,
Accountant Arrah Treasury , Arrah.

.... Petitioner/s

Versus

1. The State Of Bihar

2. The Principal Secretary, Finance Department , Govt. Of
Bihar .

3. The Principal Secretary, Cabinet Secretarial And Co-
Ordination Department , Govt. Of Bihar , Patna.

4. The Principal Secretary, General Administration
Department Govt. Of Bihar , Patna.

5. The Addl.Finance Commissioner (Expenditure), Finance
Department , Govt. Of Bihar , Patna.

6. The Deputy Secretary, Finance Department , Govt. Of
Bihar , Patna.

7. Joint Commissioner, Accounts Administration, Directorate
Of Provident Fund, Pant Bhawan , Patna.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.22339 of 2013

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1. Indra Kumar Mishra Son Of Late Giridhar Mishraa



Resident Of Flat No. 203 Samridhi Apartment, Road No. -15
Indrapuri, Durga Chowk, P.O. Paatliputra P.S. Patliputra,
Distt Patna.

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Department Of Finance, Govt. Of Bihar,
Patna.
3. The Director, Provident Fund, Provident Fund
Directoreate, Pant Bhawan Bailey Road Patna
4. The Dy. Director, Provident Fund, Provident Fund
Directoraate, Pant Bhawan, Bailey Road, Patna.
5. The Director-Cum-Joint Commissioner, Accounts &
Administration, Provident Fund Directorate, Pant Bhawan,
Bailey Road, Patna.
6. The Managing Director, Bihar State Pharmaceutical And
Chemical Development Corporation, Mourya Lok Complex,
5th Floor, Block -A, Patna.
7. The Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

(In CWJC No.7702 of 2010)

For the Petitioner/s : Mr. Sidhendra Narayan Singh
Mr. Rama Kant Singh

For the Respondent/s : Mr. (AAG-5)

(In CWJC No.8825 of 2010)

For the Petitioner/s : Mr. Ashok Kumar Mishra 2
Mr. Varun Kumar I
Mr. Ashok Kumar Washisht
Mr. Md.Rais



For the Respondent/s : Mr. (SC-23)

(In CWJC No.2796 of 2011)

For the Petitioner/s : Mr. Sitiesh Chandra Mitra

For the Respondent/s : Mr. S.S. Shabbar Hussain GP4

(In CWJC No.22339 of 2013)

For the Petitioner/s : Mr. Shri Prakash Srivastava

For the Respondent/s : Mr. Parth Sharthi

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH

CAV JUDGMENT AND ORDER

16 29-03-2017

1. The common dispute, which the present batch of writ applications filed under Article 226 of the Constitution of India, involve is as to whether such employees, who were working in different Boards/Corporations owned by the State Government of Bihar, and were placed, on deputation, under the Directorate of Provident Fund, Bihar, upon their subsequent absorption in the Directorate after coming into force of New Pension Scheme of the State Government (with effect from 01.04.2005) can claim as of right, their entitlement for pensionary benefits under the Bihar Pension Rules, 1950, on the plea that they had been serving the Directorate of the State of Bihar, though on deputation, till their final absorption in the year 2006.

2. In the present batch of writ applications, the petitioners have questioned, *inter alia*, the legality and



sustainability of an order passed by the Principle Secretary, Finance Department, Government of Bihar, dated 12.04.2010 in compliance of an order of this Court, dated 05.01.2010 passed in CWJC No. 15784 of 2009 (Mahendra Kumar Mishra and others vs. State of Bihar and others), whereby the State Respondents were directed to consider the case of the petitioners and others on their claim of being covered under Bihar Pension Rules, 1950, instead of New Pension Scheme. The claim to this effect of the petitioners was directed to be considered in the light of an earlier order, dated 18.03.2009, passed in CWJC No. 6183 of 2008 (Sheo Kumar Shukla and others Vs. State of Bihar and ors) and other analogous cases, as the petitioners had claimed that their claim was covered by the said decision of this Court in case of Sheo Kumar Shukla (supra). The Respondents were required under the orders of this Court to consider whether the claim of the persons brought on deputation to establishments under the State Government from various Corporations, for the purpose of grant of pensionary benefits could be distinguished from those covered under order, dated 18.03.2009 passed in case of Sheo Kumar Shukla (supra). By the said order, dated 12.04.2010 the case of these petitioners has been distinguished mainly on the ground that the petitioners and similarly situated other persons were covered under



Contributory Provident Fund Scheme (C.P.F. Scheme) in the light of the terms and conditions of their deputation, which was not the case with the petitioners of Sheo Kumar Shukla (supra), who were covered under General Provident Fund Scheme (G.P.F.) and their claim was based on different footing altogether. There is another reason assigned for rejecting the claim of these petitioners in the order, dated 12.04.2010, to the effect that the petitioners could not make out any enforceable legal claim of their absorption on the ground of their continuous deputation, with effect from an earlier date.

3. Since all these writ applications involve same question of law, they have been heard together and are being disposed of by the present common judgment and order.

4. The petitioner No.1 of CWJC No. 2796 of 2011 claims to be an association of all deputationists from various Boards and Corporations of the State Government to the Treasuries under Provident Fund Directorate to the State Government of Bihar; formed to look after the welfare and grievance of such deputationists. Petitioner Nos. 2 to 14 of the said case are the members of the said association, who had been deputed under various Boards under the Directorate of Provident Fund, Bihar from various Boards and Corporations.



5. There are 15 petitioners in CWJC No. 7702 of 2010, who, as per the pleadings, were deputed against various vacant posts under the Provident Fund Directorate (Finance Department), Government of Bihar, from various Boards/Corporations of the State of Bihar.

6. In CWJC No. 8825 of 2010, there are 16 petitioners and in CWJC No. 22339 of 2013, one petitioner who have also claim that they were brought on deputation from their parent Boards/Corporations against Class III posts under the Directorate of Provident Fund (Finance Department), Government of Bihar.

7. Following is the list of Boards and Corporations whose employees appear to have been sent on deputation as mentioned in letter dated 24.08.2016 brought on record by way of Annexure-3 to CWJC No. 2796 of 2001:-

1. Bihar Rajya Police Building Construction Corporation Limited, Patna
2. Bihar State Textile Corporation Limited, Patna
3. Bihar State Small Industries Corporation Limited, Patna
4. Bihar State Food and Civil Supplies Corporation Limited, Patna
5. Bihar State Forest Development Corporation Limited, Patna
6. Bihar State Construction Corporation Limited, Patna
7. Bihar State Handloom and Handicraft Limited, Patna
8. Bihar Rajya Ausadhi and Rasyan Vikash Nigam Limited, Patna
9. Bihar Rajya Pool Nirman Nigam Limited, Patna
10. Bihar State Leather Industries Development Corporation Limited, Patna
11. Bihar Panchayati Raj Bit Nigam Limited,



Patna

12. Valko, Morabadi, Ranchi

13. Bihar Rajya Adyogik Vikash Nigam Limited,
Patna

14. Bihar Finished Leather Limited, Patna.”

8. It has transpired, on the basis of pleadings on record and submissions advanced on behalf of the parties that most of the Corporations/Boards where these petitioners were working were on the verge of closure for one reason or the other and the employees working in such Corporations were not even getting their salaries etc, on regular basis. In order to mitigate the crisis, which the employees of such Boards or Corporations were facing and also to meet shortage of staffs in the Treasuries under the Directorate of Provident Fund, a decision was taken in the year 1996 by the State Government, at the highest level to depute such employees in the Treasuries, under the State Government, who were at least graduates, with preference to those having B.Com degree and a minimum of five years' of experience in Accounts and had not crossed 45 years of age. It was decided that initially the deputation would be for three years and if their work was found satisfactory, their cases for regular absorption in the Treasury cadre as Class III employees could be considered.

9. In the light of the said decision of the State Government, applications were invited from eligible persons



through Boards/Corporations, through letter No. 447, dated 24.08.1996. After having received the applications, the Directorate communicated to the respective Boards and Corporations, list of such applicants, who were found fit to be taken on deputation in terms of the Policy decision. In the said communication, dated 02.09.1997, whereby the respective Boards/Corporations were required to relieve the persons selected for being taken on deputation in different Treasuries under the Directorate of Provident Fund, conditions of service and the conditions in relation to payment of salaries and allowances were specifically laid down.

10. Clause 1(ka) of the said communication, dated 02.09.1997 clearly provided that the cases of deputationists for their absorption under Provident Fund Cadre might be considered only if their service during deputation period was found to be satisfactory. It also contained that no claim for absorption could be made out on the basis of deputation. Clause 1(kha) of the said communication further provided that at the time of their absorption, their pay scale would be fixed at the pay fixed at the basic grade of the employees in the Provident Fund Cadre (Rs. 1200-1800). Clause 1(ga) required the employees being brought on deputation, to file an affidavit of their clear agreement to conditions as prescribed under



1(ka) and 1(kha) of the said letter, dated 02.09.1997.

11. English translation of aforesaid conditions

1(ka), 1(kha) and 1(ga) read thus:-

"1(ka) They shall be deputed for three years. On being found their services satisfactory during deputation period, they shall be considered to be adjusted in the Provident Fund cadre under the conditions stipulated by the State Government. Whether the vacancies may be filled by direct appointment or through adjustment, the decision taken by the Finance Department in this regard shall be final and there shall be no claim for adjustment on the basis of deputation.

(kha) Their pay at the time of adjustment shall be fixed in the basic category of the Provident Fund cadre i.e. in pay scale of Rs. 1200-1800 and no claim for protection of existing pay shall be treated valid.

(ga) At the time of joining the deputed employee shall furnish their statement of acceptance through an affidavit in respect of the aforesaid (ka) and (kha) to the concerned District Provident Fund Cell and only then, their joining shall be accepted. It shall also



be mentioned in the affidavit that the conditions laid down vide letter no.9089 dated 02.09.97 are acceptable to them. They shall send the original copy of affidavit to the Directorate of the District Provident Fund Officer. They shall keep its attested photocopy in the private file maintained in the Provident Fund Cell."

12. Clause 2(ja) of the said communication under a heading which laid down conditions of pay scales, emoluments is important and crucial for adjudication of the present controversy, which specifically mentioned that Contributory Provident Fund Scheme (C.P.F.) was applicable in the Corporations from where they were being brought on deputation. The said Clause 2 (ja) provided that on the basis of *Last Pay Certificate*, the amount of provident fund shall be deducted by the Provident Fund Cell, which shall be sent every year to the respective parent Corporations/Boards and the Corporations/Boards shall be required to deposit the amount in the respective Provident Fund Accounts after adding Employers' contribution to the same.

13. There is no dispute over these facts. The petitioners, admittedly, worked on deputation ever since



then continuously. No decision was taken regarding their absorption, though they continued to function for long period of time, till New Pension Scheme came to be implemented for the State Government employees with effect from 01.09.2005.

14. It is noteworthy that the employees of the State Government of Bihar, holding substantive and permanent posts were earlier entitled for pension and other benefits under the Bihar Pension Rules, 1950. The State Government came out with a resolution, dated 31.08.2005 that the provisions of Bihar Pension Rules, 1950 shall not be applicable in case of Government Servants appointed on or after 01.09.2005. Through said resolution, the State Government introduced a new scheme, which prescribed that a deduction of 10% from the salary of government servants shall be made and equal amounts shall be contributed by the State Government. Account of such deductions and calculations shall be maintained by the Directorate Provident Fund for which account number under New Pension Scheme (NPS) shall be allotted. The gist of the said resolution, dated 31.08.2005 is that from 01.09.2005, New Pension Scheme replaced the Bihar Pension Rules, 1950 for such employees of the State Government, appointed on or after 01.09.2005.

15. It has transpired from records that in the



meanwhile, since no decision was being taken on the question of their absorption in the Provident Fund Cadre, some of the deputationists approached this Court by filing writ applications in the year 2002. A Bench of this Court disposed of batch of the writ applications by an order, dated 07.01.2003 passed in CWJC No.8894 of 2002 (Awadhesh Sharma and ors. Vs. State of Bihar & ors) to take a decision on the question of their absorption.

16. The State Government, in the year 2006 decided to absorb the services of the deputationists, who had been working in the Treasuries in the Joint Cadre of Clerks in the scale of Rs. 3050-4590. A letter to this effect was issued through Memo No. 1437, dated 08.03.2006, Clause 2(ga) of which provided that in the matter of pensions, the departmental resolution No. 1964, dated 31.08.2005 (supra), shall apply. Since their absorption was made in the scale of Lower Division Clerk, they questioned the said resolution, dated 08.03.2006, seeking their absorption on equivalent posts on the basis of the posts, which they had held in their respective Corporations/Boards. They approached this Court by filing writ application being CWJC No. 3890 of 2006 (Bihar Rajya Koshagar Avam Lekha Karamchari Sangh & ors v. State of Bihar & ors), which came to be partly allowed by this Court vide order, dated 04.09.2006 holding that they ought to



have been absorbed as Upper Division Clerk in the scale of Rs. 4000-6000/- with full pay protection. These employees had still a grievance, as they were claiming that they ought to have been absorbed in the Treasury Cadre in their own scale of pay, which they were getting in the parent Boards/Corporations and, accordingly, they preferred an appeal under the Letters Patent of this Court, which gave rise to LPA No. 908 of 2006 Bihar Rajya Koshagar Avam Lekha Karamchari Sangh & ors v. State of Bihar & ors).

17. This is to be noted that the State Government of Bihar came out with another resolution issued vide Memo No. 2716, dated 24.04.2007, superseding the earlier resolution, dated 08.03.2006. After having cancelled the said resolution, dated 08.03.2006, the State Government decided to absorb these deputationists as Treasury Clerks in respective District Treasuries/Sub Treasuries in the scale of Rs. 4000-6000/- with effect from 08.03.2006. Other conditions as occurring in the earlier resolution, dated 08.03.2006 including the condition that in the matter of pension, new Pension Scheme as contained in the resolution, dated 31.08.2005, remained the same.

18. As has been noticed above, the petitioners and similarly situated person had preferred appeals under the Letters Patent of the Court against the decision, dated 04.09.2006 of single Bench in CWJC No. 3890 of 2006



(Bihar Rajya Koshagar Avam Lekha Maramchari Sangh & ors v. State of Bihar & ors). A Division Bench of this Court while considering the said LPA No. 908 of 2006 (Bihar Rajya Koshagar Avam Lekha Pratiniyukta Karamchari Sangh and ors. Vs. State of Bihar and others) and other analogous cases, took into account the ground reality that since the Corporations and Boards had become unviable and were not in a position even to pay to their employees their salaries and emoluments as measure to rehabilitate such employees, the State Government had adopted a method to absorb them in a department of the Government. The Division Bench observed in paragraph 8 of its judgment and order, dated 29.05.2015 passed in case of Bihar Rajya Koshagar Avam and ors (supra), that there was no promise made by the State Government while taking such employees of the Corporations/Boards, on deputation that they would be absorbed in Treasury Service.

19. I must notice at this stage a fact which is germane and touches an important aspect of the dispute, raised in the present proceedings, that in the order, dated 04.09.2006, passed in C.W.J.C. No. 3890 of 2006 (***Bihar Rajya Koshagar Avam Lekha Pratiniyukta Karamchari Sangh & Ors. v. The State of Bihar & Ors.***) and C.W.J.C. No. 6020 of 2006 (***Anup Kumar Trivedi & Ors. v. The State of Bihar & Ors.***), a clear finding to the



following effect was recorded by the single Bench:-

"..... However, without going into the merits on that point it is evident that the petitioners were mere deputationists until their services were absorbed in the State Government by letter No. 1437 F (2) dated 8.3.06 (Annexure-1) whereas the said resolution of the State Government is dated 22.2.06, i.e., prior to the petitioners becoming Government servants.

For the said reason I hold that the petitioners cannot challenge the decision of the Government with respect to the reorganisation of the cadre and post taken prior to their entry into government service. Hence, the challenge to the said resolution is held as not maintainable on behalf of the petitioners and it is accordingly rejected.

....."

I must also notice that the finding that the petitioners entered into service of the State Government, only upon their absorption, through letter No. 1437 F (2), dated 08.03.2006, has remained undisturbed in the Division Bench decision, passed in L.P.A. No. 908 of 2006, in case of ***Bihar Rajya Koshagar Avam Lekha Pratiniyukta Karamchari Sangh*** (supra). The finding to this effect has, thus, attained finality.



20. This is relevant that the deputationists from the Corporation, in C.W.J.C. No. 3890 of 2006 (***Bihar Rajya Koshagar Avam Lekha Pratiniyukta Karamchari Sangh*** (supra) and in C.W.J.C. No. 6020 of 2006 (***Anup Kumar Trivedi***) (supra), who are petitioners in present proceedings also, were seeking quashing of resolution of the State Government, issued vide memo No. 1098, dated 22.02.2006, whereby, the cadre of the employees in the Treasuries of the State had been amalgamated with the Collectorate Cadre Lower Division Clerks, in the pay-scale of Rs. 3050-4590/-. This Court, taking into account the absorption of the petitioners in the government service subsequent to passing of the said resolution, dated 22.02.2006, had categorically held that the petitioners could not challenge the said decision of the State Government with respect to the reorganization of the cadre and posts, taken prior to their entry into government service.

21. The aforesaid conclusion, recorded in the order, dated 04.09.2006, has attained finality up-to the Division Bench of this Court, in the light of judgment and order, dated 29.05.2015, passed in L.P.A. No. 908 of 2006 ***Bihar Rajya Koshagar Avam Lekha Pratiniyukta Karamchari Sangh*** (supra).

22. Situated thus, I will proceed to consider the



claims of the petitioners with the premise that their entry into service of the State Government is only upon their absorption with effect from 08.03.2006.

23. Learned counsel, appearing on behalf of the petitioners, with all tenacity, perseverance and vehemence too, have attempted to persuade me that their services in the State Government should be treated to have been absorbed before the *NPS* came to be in force, since it was because of the laches on the part of the State Government that the decision to absorb them after completion of 3 years of satisfactory service on deputation was not taken and the matter of their absorption got unnecessarily delayed, without any valid reason. It has also been argued on behalf of the petitioners that if other view is taken, it will amount to giving benefit to the State Government for its laches in not acting promptly and within reasonable time, in the matter of absorption of the petitioners in State Government service. Such arguments, however, cannot re-agitated in the present proceedings in view of this Court's decision, dated 04.09.2006, passed in C.W.J.C. No. 3890 of 2006 ***Bihar Rajya Koshagar Avam Lekha Pratiniyukta Karamchari Sangh*** (supra), which has affirmed by the Division Bench, as has been noticed above.

24. In the background of the undisputed facts, as discussed above, the question, which has arisen, is as to



whether the petitioners can claim pension under the Bihar Pension Rules, 1950, which has become inoperative for the employees entering into service of the State Government of Bihar on or before 01.09.2005. Several orders/decisions of this Court has been cited on behalf of the petitioners by learned counsel, appearing on their behalf, in order to impress that the petitioners cannot be treated as fresh entrants in the State Government of Bihar, since they had been continuously working right from 1996 till their absorption. I need not refer to those orders and judgments, in the light of earlier finding of this Court, in case of these petitioners only, to the effect that they were deputationists till they came to be absorbed in State Government service with effect from 08.03.2006 and they acquired the status of government servants only after their absorption with effect from 08.03.2006. Strong reliance has been placed on a Division Bench decision of this Court, dated 19.04.2010, passed in L.P.A. No. 608 of 2006, in case of ***Avinash Vatsyayan Vs. The State of Bihar & Ors. and other analogous cases***, which related to cases of deputationists to State Government Departments from BISCOMAUN. In the said case, the deputationists had questioned their repatriation by the loanee Department mainly on the ground that their deputation was not a simple deputation, but it was a kind of transfer for their



absorption in accordance with the policy decision of the State Government. The Division Bench of this Court quashed the repatriation orders in those cases, holding that such deputations were not simple deputations rather under a valid policy for the purpose of "*rehabilitation*" or "*absorption*". The Division Bench of this Court allowed them to continue on deputation till the decision or follow-up action was taken for their absorption etc. The said Division Bench decision, in case of **Avinash Vatsyayan** (supra), in my opinion, does not serve the purpose of the petitioners for two reasons. Firstly, the said decision does not lay down a law or hold that the deputationists shall be treated to have been absorbed with effect from any date, prior to 01.09.2005, with effect from which the New Pension Scheme came into force rather it contains a direction to the State Government to take a decision on the question of their absorption. Secondly, dealing with the cases of deputation, under the Provident Fund Directorate, this Court, in case of **Bihar Rajya Koshagar Avam Lekha Pratiniyukta Karamchari Sangh** (supra), has clearly held that the deputationists shall be treated to be in government service only with effect from 08.03.2006 and not from any prior date.

25. Reliance placed on behalf of the petitioners on a decision of this Court, dated 01.10.2010, in C.W.J.C.



No. 3911 of 2010 (***Birendra Prasad and ors. v. State of Bihar and ors***), has also no application in the facts and circumstances of the present case. In C.W.J.C. No. 3911 of 2010, the Court was faced with a situation where the advertisement for appointment was issued in 1998 and despite selection of the petitioners of that case; they were denied appointment on the plea of absence of vacancies, which was found to be factually incorrect. This is not the situation in the present case.

26. As has been noticed above, it was specifically mentioned in the communication, dated 02.09.1997 that no claim for absorption could be made out on the basis of deputation. The decision to send these petitioners on deputation, as it appears from the records, was taken to rehabilitate the employees of such State Corporations, which had become **nonviable** and were not in a position to pay their emoluments. This aspect has been referred to in the Division Bench decision, in case of ***Bihar Rajya Koshagar Avam Lekha Pratiniyukta Karamchari Sangh*** (supra). While accepting the terms of deputation, these petitioners thus, knew it well that they could not raise any claim for absorption, though it was open to the State Government to consider absorption of deputationists on completion of 3 years of their satisfactory service while on deputation, as no legal right could be said



to have been accrued to them for their absorption.

27. An employee, on deputation, cannot successfully assert his claim for permanent absorption in a Department, where he works on deputation, unless his claim is based upon a statutory Rule, Regulation or Order, having the force of law. There is no vested right in such employee to get absorb in a borrowing Department. Even long continuance in borrowing Department, after expiry of deputation period, does not confer any enforceable right on such deputationists for permanent absorption. There cannot be any two views on this legal proposition, in view of a number of Supreme Court decisions; illustratively in cases of ***Kunal Nanda Vs. Union of India & Anr.***, reported in **(2000) 5 SCC 362**; ***Ratilal B.Soni & Ors. Vs. State of Gujarat & Ors.***, reported in **1990 Suppl. SCC 243**; and ***Mahesh Kumar K. Parmar & Ors. Vs. S.I.G. of Police & Ors.***, reported in **(2002) 9 SCC 485**.

28. There cannot be any denial of the fact that these petitioners were taken on deputation under the policy of the State Government in order to rehabilitate them since they were not getting their emoluments in the Corporations, where they were ordinarily appointed because the Corporations had become ***nonviable*** and were on the brink of closure. The circumstance under which they were taken on deputation in the Department did not confer



upon them any legal or fundamental right to be absorbed with effect from a particular date. Further, it was specifically mentioned in terms and conditions of deputation that no claim could be made out for absorption of the deputationists in the borrowing Department because of their deputation. It was because of this that at no point of time any direction was issued for absorption of such deputationist by this Court rather the authorities were directed to consider their case for absorption.

29. Having once come to the conclusion that the petitioners are to be treated to have entered into government service with effect from the effective dates of their absorption, i.e., 08.03.2006, can it be said that on the basis of their continued deputation since 1997, they can claim benefit of pension in accordance with the Bihar Pension Rules, 1950. Rule 58 of the said Bihar Pension Rule, 1950, specifically provides as to what service of a government servant qualifies for pension under the Rules, which reads thus :

"58. *The service of a Government servant does not qualify for pension unless it conforms to the following three conditions :-*

First – The service must be under Government.

Second – The employment must be substantive and permanent.



Third – The service must be paid by Government.

These three conditions are fully explained in the following sub-sections.”

This is an admitted fact that the engagements of these petitioners on deputation could not fulfill the second mandatory condition of Rule 58 of the Rules as their employment was not substantive and permanent.

30. As has been noticed at the outset, the petitioners in the present batch of writ applications have, *inter alia*, questioned the order passed by the Principal Secretary, Finance Department, Government of Bihar, Patna, dated 12.04.2010, in compliance of an order of this Court, dated 05.01.2010, passed in C.W.J.C. No. 15784 of 2009 (***Mahendra Kumar Mishra & Ors. Vs. The State of Bihar & Ors.***).

31. Correctness of the reasoning given in order dated 12.04.2010 has to be tested in the light of the submissions, which have been advanced on behalf of the parties, and the pleadings, which have been brought on the record. This Court by its said order, in case of ***Mahendra Kumar Mishra*** (supra) , had directed the Department to consider the cases of the petitioners in the light of an earlier order, dated 18.03.2009, passed in C.W.J.C. No. 6183 of 2008 (***Sheo Kumar Shukla Vs. The State of***



Bihar and other analogous cases) since the petitioners of C.W.J.C. No. 15784/2009 had claimed that their case was covered by an earlier decision of this Court.

32. In case of ***Sheo Kumar Shukla*** (supra). In case of ***Sheo Kumar Shukla*** (supra), the petitioners were appointed, as daily wage workers, way back in the year 1981. They were absorbed in regular work charged establishment on 04.03.1988. Their GPF accounts were also opened with effect from 13.01.1988 and, accordingly, deductions from their salary for deposit in the GPF accounts had also commenced. However, subsequently, they were reverted back to their status of daily wage workers on the ground that their absorption in the work charged establishment was itself contrary to the resolution of the Finance Department, dated 23.08.1987. In that situation, the petitioners of those cases had approached this Court by filing writ applications, which were disposed of by an order, dated 13.07.2006, referring the matter to the State-respondents for consideration. Thereafter, they were again regularized/absorbed in regular establishment by an order, dated 06.12.2006. In their cases from December, 2006, the GPF deductions from their salaries against GPF contributions had again commenced. Subsequently, in the year 2008, a letter came out that they being fresh appointees after 01.09.2005, they shall come within the



purview of CPF scheme.

33. In the background of above noted facts, particularly the fact that GPF accounts were opened in their cases and deposits were made in their GPF accounts after making deduction from their salary and they were working as regular employees from 1998-2002 and that their absorption by virtue of order, dated 06.12.2006, was, as a matter of fact, their reinstatement, the Court held that they could not be treated to be fresh appointees.

34. The cases of these petitioners and the cases, which were dealt with in the order, dated 18.03.2009, passed by this Court, in case of ***Sheo Kumar Shukla*** (supra), are clearly distinguishable on two counts. *Firstly*, in case of ***Sheo Kumar Shukla (supra)***, the petitioners were taken in regular establishment in 1996 after having worked as daily wage worker and under work-charged establishment for several years. Their services were reverted to the status of daily wage employees in the year 2002. They were subsequently reinstated in the year 2006. *Secondly*, GPF accounts were opened in which the deposits were made after making deductions from their salary. The cases of these petitioners, on the other hand, were entirely different as is evident from what has been discussed above. Pointing out these distinctions, the Principal Secretary, Finance Department, Government of



Bihar, Patna, passed the aforesaid impugned order, dated 24.12.2010. I do not find that distinction carved out by the Principal Secretary in his order, dated 12.04.2010, between the cases of these petitioners and the cases of persons covered under order, dated 18.03.2009, passed in case of **Sheo Kumar Shukla** (supra), is completely unjustifiable.

35. I will now deal with the case of these petitioners in terms and conditions of deputation, as contained under Clause 2 (ja), referred to above, which clearly indicates that Contributory Provident Fund scheme was applicable in the Corporations from where they were brought and the said scheme was to be applied in their cases, while they were on deputation under the Directorate of Provident Fund.

36. Since the petitioners in their pleadings maintained complete silence with regard to the fact as to whether the deductions against the provident fund account were made under the C.P.F. Scheme or G.P.F. Scheme and what scheme was being followed during the period they were on deputation and nothing on the basis of other pleadings on record in this aspect was emerging, by an order, dated 21.07.2015, in order to ascertain the factual background, I had passed the following order directing the Principal Secretary, Finance Department, Government of Bihar, to file a detailed exhaustive affidavit



dealing with the mode and manner in which the deductions were made, from the salaries of these petitioners for being deposited in the respective provident fund account:-

"On the basis of pleadings and submissions made on behalf of the parties, it could not be deciphered as to whether during the period the petitioners were on deputation under the Directorate of Provident Fund and the District Treasuries, the Employer's contribution was being deposited in their respective provident fund account or not and as to whether any specific decision was taken by the State Government or competent authority to deposit or not to deposit the contributory provident fund amount. This aspect is important for determination of rights of these petitioners and adjudication of the present matter. I am also of the opinion that any decision in this case may have wide ramification. I, therefore, direct the Principal Secretary, Finance Department to file detailed exhaustive affidavit dealing with the mode and manner in which the deductions were made, from the salaries of these petitioners for the purpose of being deposited in the provident fund account and the employers' contribution deposited, if any, in the said account."

37. In compliance of the said order, Mr. Ravi Mittal, the Principal Secretary, Finance Department, Government of Bihar filed a detailed counter affidavit. The Court is virtually upset by the disclosures made in the said counter affidavit.

38. It has been stated that the employees who were deputed under G.P.F. Directorate and its Subordinate Offices neither made their contributions nor the employer contributed their share for depositing the same in respective contributory Provident fund account. As per the counter affidavit (Paragraph-5), the employers contribution



was not deposited in the Contributory Provident Fund account as the employees also did not make contribution in their respective provident fund account during their deputation period. At the same time, it reveals that a report was called for from all District Provident Fund Officers from which it appears that most of the employees deputed in the G.P.F. Directorate and Subordinate Offices had opened G.P. F. account number in their names and kept on depositing their G.P.F contribution in their respective account numbers. Nothing has been indicated in this regard as to how these employees were allowed to open their G.P.F. accounts, that too not uniformly, despite the terms of deputation in Clause 2(ja) prescribing otherwise. It has been stated in paragraph 9 that after absorption of the deputed employees through letter No. 2717 dated 28.08.2006 issued by the Finance Department, out of 49 employees only six employees deposited their contribution towards C.P.F. whereafter the share on the part of the employer was also deposited in their respective accounts. As a consequence of absorption and the decision of the State Government that the deputationists on their absorption shall be covered by N.P.S., the G.P.F. Directorate issued a letter bearing No. 3453 dated 27.04.2010 requiring cancellation of G.P.F. account numbers allotted in the name of such employees and



allotment of new account numbers under Contributory Provident Fund Scheme. The counter affidavit also states that the Finance Department, vide its letter dated 30.11.1996 had instructed that as the Contributory Provident fund scheme was implemented in Corporations so on the basis of last pay certificate, contribution towards provident fund will be deducted from their monthly salary by the concerned Treasury Officer and the amount will be sent to the parent Corporation/Boards. It further required that Nigam/Board will add its own contribution and send it to the concerned authority. It has been stated further that "thereafter vide letter No. 5076 dated 10.07.2003 it was notified that the employer contribution will be *paid by the Government.*" Paragraph 13 of the counter affidavit, being of much relevance is being extracted hereinbelow:-

"13. That information about these 163 employees is available with Finance Department. Out of 163, 15 employees opened GPF Account No., but later on 11 adopted New Pension Scheme, 43 employees were not making any contribution towards CPF, 73 employees are making contribution to CPF. As is today out of 163, 104 employees have been registered under New Pension Scheme. Many of the employees are no more in service. The informations received from the treasuries indicate that there are three category of employee in treasuries"-

- (i) *Employees whose deductions towards EPF/CPF were made and along with Government contributions sent to Concerned Corporation. These deputationists have followed the rules and provisions related to deputation to a foreign service. Later on they adopted New Pension Scheme.*
- (ii) *Employees whose contributions towards*



CPF/EPF were not made hence employer contribution was also not made. They never requested to make deduction from their salary towards EPF/CPF or send it to the parent Corporations.

(iii) *Employees who opened G.P.F. account started deduction from salary towards CPF account?. In all the district Provident Fund Office and treasuries, these employees of Nigam/Board were deputed.*

39. As regards the persons who were deputed in Treasuries, it has been averred in paragraph 14 that majority of the deputationists turned clerks have adopted New Pension Scheme and those who had contributed towards their CPF/EPF/GPF are getting their payment with interest.

40. What has emerged from the pleadings in the above counter affidavit that the State was not following any uniform procedure for the employees of the Corporations brought on deputation under the State Government, in the matter of applicability of Provident Fund Scheme. It is the stand of the State Government itself that there were three categories of employees in treasuries, one being category of such employees who following the terms of deputation allowed deductions to be made from their salaries towards CPF/EPF whereafter they adopted New Pension Scheme. In their cases Government contributions were sent to the concerned Corporations. Second category is of such employees in whose cases neither deductions from their salaries were made to be



deposited in the CPF/EPF account and, therefore, the employer contribution was also not made. Such employees did not make any request for deductions to be made from their salaries towards EPF/CPF or send it to the parent Corporations. Third category consists of such employees, who opened GPF account and deductions were made from their salaries to be deposited in the said account.

41. The facts mentioned in the counter affidavit are not in dispute. Taking note of the gravity of the matter, since non-deposit of Provident Fund amount in the account of the employees under Contributory Provident Fund Scheme would have had civil/criminal consequences, on 19.08.2015, I passed an order on 19.08.2015 in the present batch of the applications that it was expected from the State of Bihar that it shall take a policy decision to deal with the peculiar situation. I had indicated in the said order that if no policy decision was taken at the end of the State Government, this Court will be left with no option but to adjudicate the matters on their merits by issuing necessary directions. In response to the said order, dated 19.08.2015, the Principal Secretary, Finance Department, Government of Bihar filed his second supplementary counter affidavit on 28.08.2015 stating, *inter alia* as follows, in paragraph 11:-



"11. That in view of the above the State Government has taken a decision for these employees and is to pay the rightful claims of these employees from the date of deputation to 07.03.2006 (before the date of absorption 08.03.2006). As per the rules and letters issued by the Finance Department following claims are payable during the period of deputation.

- (1) Cash payment against unutilized earned leave during period of deputation will be paid by the State Government.
- (2) Contribution towards Group Insurance Scheme had to be made by the deputationist and if they have contributed towards this Scheme, payment will be made.
- (3) If they have contributed to General Provident Fund the same will be paid to them with interest.
- (4) If they have contributed to Contributory Provident Fund /Employee Provident Fund and this contribution along with Government contribution have been sent to their Corporation, the same will be paid by the respective Corporation.
- (5) If the deputationists have not made any contribution to CPF/EPF then they will not get their own contribution, but State Government will made payment only towards Government contribution with interest.
- (6) Since 08.03.2006 they are Government employees under NPS so they will get benefit of NPS as per guidelines of Pension Fund Regulatory and Development Authority (PFRDA). Under the NPS, these employees are making 10% contribution of pay plus DA towards their pension fund and simultaneously State Government is contributing matching contribution of 10% to their pension fund per month. After retirement at the age of 60 years, these employees will get the 60% of their Pension Fund (Employee Contribution + Government Contribution +Dividend) in lump sum. Out of 40% of the Pension Fund, Pension plan will be purchased by NSDL/PFRDA. The employees will get pension lifelong."



42. From reading of the above, it is evident that on the claim of these petitioners of being covered by the Bihar Pension Rules, a specific plea has been taken that since they have been absorbed on 08.03.2006, after implementation of New Pension Scheme, Bihar Pension Rules cannot be applied in their cases. On the claim of the petitioners that due to lapse on the part of the State Government, the matter of their absorption got delayed, it has been stated that the petitioners were taken on deputation under the State Government with a bona fide intention to provide them employment as the Corporations under which they were working were on the verge of winding up. It has submitted in course of argument that had the petitioners been not taken on deputation, they would have lost their employment.

43. In the background of aforementioned facts over which there is no dispute at all, in order to adjudicate the dispute involved, I will again come back to Clause 2(ja) of the terms and condition of deputation as clearly mentioned in the letter of absorption. A basic principle is to be kept in mind that a deputationists while on deputation remains substantially attached to the parent department and his *lien* on the post held by him remains fully alive while on deputation. F.R. 13 of the fundamental rules clearly lays down that unless *lien* is suspended or



transferred, a Government servant (herein an employee of the Corporation) holding substantially a permanent post retains a *lien* on that post while on foreign service (i.e. on deputation). I am, therefore of the considered opinion that till date the petitioners stood absorbed in State Government Department. They retained their *lien* with their parent employer. Having discussed thus, I have no hesitation in reaching a definite conclusion that the petitioners and other similarly situated persons are not entitled for pensionary benefits under the Bihar Pension Rules, 1950, Their condition of service to the extent it relates to provident fund and other connected matters shall be governed by the Employees Provident and Miscellaneous Provisions Act, 1952 (Provident Fund Act) read with the schemes framed thereunder including Employees Provident Fund Scheme, 1952.

44. It cannot be gainsaid that the employees of different Boards and Corporations deputed to the State Government under various orders, who form subject matter of the present proceedings, and whose services came to be absorbed under the State Government of Bihar after coming into force of N.P.S. form a class. This has a natural consequence that all of them will have to be given uniform and equal treatment for the purpose of determination of their rights and entitlements, by applying



a uniform principle in accordance with law. The State Government of Bihar has *candidly* accepted in the counter affidavit that such employees have been treated in three different ways. Out of 163 employees, 104 employees are said to have been registered under the New Pension Scheme. There is one category of employees in whose case, deductions towards employees Provident Fund from their salaries were made and employers' contributions were sent to the concerned Corporations and in their cases terms of deputation to a foreign service were adhered to. They are the persons who subsequently opted new Pension Scheme. There can be no difficulty in case of such employees; rather, such employees cannot have any grievance since in their cases they earned the benefit of employers' contribution to the provident fund with interest thereon. Number of employees of this category is substantial, which is evident from the counter affidavit filed on behalf of the State Government sworn by Mr. Ravi Mittal, the Principal Secretary, Finance Department, paragraph 13 of which has been quoted hereinabove. The difficulty lies with other two categories, viz,;

(a) Where the employees got opened G.P.F. Account and in their cases, upon deductions having been made from their salaries towards G.P.F accounts, deposits are said to have been made. (b) The other category of



employees where no deductions were made by the employer from their salaries for being deposited in their employees Provident Fund Account/ GPG Accounts nor the employer deposited its share, i.e. contributory provident fund amount in their respective account.

45. I will take up first the case of employees belonging to such category in whose cases the employer admittedly did not make any deductions for being deposited in their respective account nor the employers' contribution was deposited in respective account. There cannot be any dispute that till absorption of these petitioners under the service of the State Government in case of the employees on deputation from the Corporations were governed by the Employees Provident and Miscellaneous Provisions Act, 1952 (Provident Fund Act) read with the schemes framed thereunder including Employees Provident Fund Scheme, 1952. Keeping in mind the provisions of the Employees Provident Fund Act and the Schemes framed thereunder and apparent violation of the said provisions, this Court had given State Respondents an opportunity to come out with plausible scheme suitable for redressing the grievances of such petitioners and similarly situated persons. As has already been mentioned hereinabove, the State Government decision in this regard has been explained in one of the



counter affidavits filed on 28.08.2015, paragraph 11 of which has been quoted hereinabove. Dealing with the deputationists, who did not make any contribution to C.P.F./E.P.F, the decision of the State Government is that the State Government will pay the employers' contribution with interest. Under the Employees Provident Fund Scheme, 1952, the duty to make deductions of employees share is on the employer. It is the duty of the employer to ensure that both employees' share and the employers' share are deposited in respective accounts. Failure to do so may have its own consequences under the Employees Provident Fund Act. However, considering the fair stand taken on behalf of the State that it shall pay employers' contribution with interest, I am not inclined to take this matter any further on this aspect. This is also because the petitioners themselves have not come with a definite plea on this point and it is only after an exercise was carried out under the orders of this Court that these facts have emerged.

Such employees are, accordingly, held to be entitled to the employers' contribution with effect from the date from which the State Government was obliged to contribute employer's share with interest provided under the Employees Provident Fund Scheme, 1952, till the date of actual payment.



46. Coming to other category where the employees are said to have contributed to General Provident Fund, in my view, they will also have to be treated equally. In their cases also, since their services have not been held to be pensionable in the present judgment, they are held to be entitled for employers' contribution with interest, in accordance with the provisions of Employees Provident Fund Act. The State Government, like other category of employees as discussed in forgoing paragraph, will be required to make payment of employer's contribution with interest. In their cases, the contributions made to General Provident Fund Amount, in my view, wrongly, will have to be returned to them with interest earned thereon, if not already paid in case of their superannuation or otherwise.

47. In addition, the State Government shall abide by its decision as discussed in the counter affidavit filed on 28.08.2015, which has been extracted in paragraph 41 of the present order.

48. All such payments must be made to the petitioners and similarly situated persons within a period of three months from the date of the order.

49. While parting with the present judgment and order, the Court appreciates the fair stand taken on behalf of the State Government by taking a decision as has been



mentioned above, which, as a matter of fact, made this Court's work easier in determination of the dispute and resolving the issues involved in a simpler way.

50. These applications stand disposed of accordingly.

ArunKumar/-

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(Chakradhari Sharan Singh, J.)

