

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13715 of 2015

1. Dr. Sachindra Narayan son of Late A.K. Narayan, resident of Mohalla-102, Rampari Apartment, West Patel Nagar, Police Station- Shastri Nagar, District- Patna.
2. Dr. Ramesh Prasad Sinha son of Late Narbadeshwar Prasad Sinha, at present residing at- Aangan Apartment, Congress Maidan Road, Police Station- Kadam Kuan, Patna, District- Patna.
3. Dr. Krishna Kumar Verma son of Late Omkar Prasad Verma, resident of 25, Shradha Nand Road, Police Station- Kotwali, District- Ranchi (Jharkhand)
4. Dr. Bipin Bihari Mandal son of Late Gopal Chandra Mandal, residing at Flat No.18, Vishal Kunj Apartment, Road No.4, Police Station- Kadam Kuan, District- Patna.
5. Dr. Manohar Lal son of Late Gyan Chand, at present residing at 403, Nawal Ashram Complex, Jahaji Kothi Road, Dariapur, Police Station- Kadam Kuan, District- Patna.
6. Tung Nath Dubey son of Late Rameshwar Dubey, resident of Mohalla- Mahabir Nagar, West of Mak Path (70 Feet Road), Canara Bank, 2nd Street, Police Station- Beur, District- Patna.
7. Bindeshwar Prasad son of Late Ram Nath Singh, resident of Rampur Road, Near Bazar Samiti Gate, Police Station- Bazar Samiti, District- Patna
8. Shamsuddin Ahmad son of Late Abdur Rahim, resident of Mohalla- Makhdum Rasti Nagar Colony, Police Station- Phulwari Sharif, District- Patna.
9. Nandu Sah Son of Late Bhagwan Das, resident of Mohalla-Nanmuhia More, Police Station- Sultanganj, District- Patna.
10. Indra Narayan Das son of Late Mathura Lal Das, resident of Mohalla- Sri Krishna Nagar, Road No.8, Police Station- Budha Colony, District- Patna.
11. Dr. Prabhash Prasad Sinha son of Late Akhileshwari Prasad Sinha, resident of Mohalla- Indrapuri, Road No.2, Police Station- Patliputra, District- Patna.
12. Dr. Suresh Prasad son of Late Yadunandan Prasad, resident of 101, Annapurna Apartment, Punai Chak, Police Station- Shastri Nagar, District- Patna.
13. Kameshwar Thakur son of Late Doman Thakur, resident of Village- Chaurrah, Police Station- Khusrupur, District- Patna.
14. M.J. Phillip son of Late M.P. John, resident of My Nest, Tagore Road, Near Radio Park, Tai Kanna Puram, Police Station- Pooja Pura, District- Trivandrum.
15. Ramesh Pandit son of Late Ram Devan Pandit, resident of Babu Tola, Bankipur, Police Station- Pirbahore, District- Patna.
16. Mostt. Usha Devi wife of Late Chandra Bhushan Singh, resident of Village- Shekhpur, Police Station- Waris Nagar, District- Samastipur.
17. Mostt. Lalpari Singh wife of Late Rambali Singh, at present residing at A.N. Sinha Institute of Social Studies, Police Station- Gandhi Maidan, District- Patna.
18. Mostt. Sita Devi wife of Late Suresh Ram, resides at Mohalla- Budhha Colony, House of Ashok Kumar, Police Station- Budhha Colony, District- Patna.
19. Paras Nath son of Late Jagdev Prasad, resident of Mohalla- Mahatma Gandhi Nagar, Kankarbagh, Police Station Agam Kuan, District- Patna.
20. Ganni Ram son of Late Lakhan Ram, residing at Mohalla- Rajapur, Gali No.28, Police Station- Budhha Colony, District- Patna.
21. Dhan Kumar son of Late Ram Kumar Bahadur Singh, residing at Mohalla- Mandiri, Police Station- Budhha Colony, District- Patna.
22. Mostt Laxmi Devi wife of Late Dhan Bahadur Nayak, at present residing at



A.N. Sinha Institute of Social Studies, Police Station- Gandhi Maidan, District- Patna.

23. Mostt. Sushila Verma wife of Late Radha Krishna Prasad Verma, residing at Chandmari Road, Kankarbagh, House of Bablu Kumar Verma, Police Station- Kankarbagh, District- Patna.

24. Indra Prasad son of ate Ram Chandra Prasad, residing at Mohalla- Bazar Samiti, Chai Tola, Mussalahpur, Police Station- Bazar Samiti, District- Patna.

25. Dr. Syed Fazlerab son of Late S.M. Ismail, residing at Quarter No.2, Sinha Library Campus, Sinha Library Road, Police Station- Kotwali, Distrit- Patna.

26. Chitranjan Sinha son of Late Achyutananda Sinha, resident of Mohalla- New Bahadurpur, Near Shyam Mandir, Road No. 13B, Police Station- Bahadurpur, District- Patna.

27. Asharfi Jha son of Late Dashrath Jha, resident of Village- Balha, Police Station- Rajnagar, District- Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Higher Education, Government of Bihar, Patna.

2. The Finance Secretary, Government of Bihar, Patna.

3. The A.N. Sinha Institute of Social Studies through the Registrar, Police Station- Gandhi Maidan, District- Patna.

4. The Director, A.N. Sinha Institute of Social Studies, Police Station- Gandhi Maidan, District- Patna.

5. The Registrar, A.N. Sinha Institute of Social Studies, Police Station- Gandhi Maidan, District- Patna.

6. The Board of Control through the Chairman, A.N. Sinha Institute of Social Studies, Police Station- Gandhi Maidan, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kripa Nand Jha, Adv.

For the State : Mrs. Nutan Sahay, A.C. to AAG-12

For A.N.Sinha Institute : Mr. Piyush Lal, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

C.A.V. JUDGMENT

Date: 20-06-2017

The present writ application has been filed by twenty seven petitioners of the Anugrah Narayan Sinha Institute of Social Studies, Patna (for short 'the Institute') praying to direct the respondents to pay the arrears as well as current pension on month to month basis which has been stopped from the month of June, 2014.



2. Heard Mr. Kripa Nand Jha, learned Advocate for the petitioners, Mrs. Nutan Sahay, learned Assistant Counsel to Additional Advocate General No. 12 for the State and Mr. Piyush Lal, learned Advocate for the Institute.

3. Mr. Kripa Nand Jha, learned Advocate for the petitioners submitted that the petitioner nos. 1 to 15, 19 to 21 and 23 to 27 retired from service on different dates between 28.02.2011 and 31.07.2013 whereas petitioner nos. 16, 17, 18 and 22 are widows of the employees of the Institute, who died on 21.11.2007, 14.07.2011, 24.03.2001 and 17.09.1998 respectively. All the petitioners were getting pension/family pension as per their entitlement since the date it became due till May, 2014. He contended that the pension scheme was introduced by a decision of the Board of Control (for short 'the Board') of the Institute which is its supreme governing body. He contended that for not paying pension to the retired employees the Institute is taking a plea that without financial support from the Government of Bihar the Institute is not in a position to pay the pension due to paucity of fund. According to him, such plea is palpably false in view of the fact that the Institute is contributing to the new pension scheme of the working employees and is also paying the salary to the working employees. He contended that the petitioners are entitled to get their pension and paucity of fund is no



ground to deny pension to the retired employees. According to him, it is the duty of the Institute as well as the State to arrange funds and pay legal dues to the petitioners.

4. The next submission of the learned counsel for the petitioners is that the Government of Bihar never raised any objection prior to 2014 and funds for payment of pension were regularly being released which were having due sanction of the Cabinet. Hence, the stand of the Government of Bihar is wholly erroneous that it is not liable to pay pension to the retired employees especially in view of the fact that the Institute is established by the legislative Act of the State of Bihar.

5. Another submission made by the learned counsel for the petitioners is that under the compelling circumstances two of the retired employees of the Institute, namely, Amitabh Chandra and Professor S. Narayan approached the Bihar Human Rights Commission for payment of pension. He contended that after hearing the parties the Chairman of the Commission vide order dated 09.04.2015 directed for payment of arrears of pension to the pensioners of the Institute within a period of six weeks and to pay regular pension every month. His contention is that even after the direction of the Human Rights Commission only one month's pension was paid to the petitioners and thereafter once again payment of



pension has been stopped. He contended that the right of pension is in the nature of right to property and in view of Article 300-A of the Constitution of India no person can be deprived of the property save by authority of law. According to him, the impugned action on the part of the respondents in stopping payment of pension is violative of Articles 19, 21 and 300-A of the Constitution of India.

6. On the other hand, Mrs. Nutan Sahay, learned Assistant Counsel to Additional Advocate General No.12 appearing on behalf of the State submitted that the Institute has been created and established on 08.10.1964 under The Anugraha Narayan Sinha Institute of Social Studies Act, 1964 (for short 'the Act'), which regulates the entire functioning, resources etc. of the Institute and nowhere the Act whispers about payment of any pension to its employees. She clarified that the State never granted any financial assistance to the Institute for paying pension to its employees. Till the financial year 2011-12, the Government of Bihar used to release all kinds of Grant-in-aid under single head "3101". The Accountant General (A & E) specifically requested the State Government to open budget heads for Grant-in-aid in the budget document so that the required disclosure may be depicted in the finance accounts. In the light of the letter of the Accountant General, the Bihar Government opened three budget heads "3104" (Grant-in-aid for salary), "3105"



(Grant-in-aid for creation of infrastructure) and “3106” (Grant-in-aid for other than salary and infrastructure). She contended that the pension amounts are released under the budget head 3106. Under the said head no Grant-in-aid was ever released to the Institute.

7. Learned counsel for the State further contended that though there is provision for Contributory Provident Fund (for short ‘C.P.F.’) and gratuity applicable to the eligible employees of the Institute in the Anugraha Narayan Institute of Social Studies Rules, 1966 (for short ‘the rules’) and the Anugraha Narayan Institute of Social Studies Staff Service Condition Rules framed under Clause 16 of the Anugraha Narayan Institute of Social Studies Regulation 1966, there is no provision of pension under the Act, rules and regulations governing the Institute. She contended that the Board of the Institute in its meeting held on 15.02.1985 resolved to adopt the scheme of retirement benefits for the employees of the Institute with effect from 01.02.1985 as per the provisions contained in the retirement benefits statute of the Patna University without taking any prior approval of the State Government. However, even the said resolution adopted by the Board categorically speaks that the financial liability of pension scheme so implemented shall be borne by the Institute from its own resources and no separate grant would be sought from the State Government. She contended that that when it came to the notice of



the State Government that the institutes and academies are taking decision having financial implication on their own without taking any prior approval of the State Government, the State Government was forced to issue letter no.411 dated 13.03.2014 addressed to all such institutes and academies directing them to stop taking such decisions and take steps for seeking approval from the State Government.

8. Mr. Piyush Lal, learned Advocate appearing for the Institute submitted that the Board of the Institute in its meeting held on 15.02.1985 accepted the recommendations of the Committee on retirement benefits dated 11.02.1985 and decided to implement the triple retirement benefit scheme for its employees, which would be operated from the Institute's resources. He accepted that the resolution clearly stipulates that no separate grant would be sought from the State Government for it. He submitted that the Institute was regularly paying pension to its retired employees from its internal resources as well as from the grants from the State Government located in budget head from 2004-05 to 2010-11. However, when the Government of Bihar vide letter no.411 dated 13.03.2014 directed the institutes and academies to stop payment of pension to their retired employees, the issue was discussed in the meeting of the Board of the Institute and it was decided that in principle pension would be continued provided the State Government concurs with it and give



financial support for this purpose. The Board also decided to seek grants from the State Government for pension. He contended that the Institute has written a number of letters to the State Government for release of grants for payment of pension to its employees. In the above context, a meeting was also held on 29.04.2015 between the officials of the State Government including the Chief Secretaries and the officials of the Institute. He contended that in the said meeting in so far as removal of ban on payment of pension was concerned, it was decided that the Act relating to the Institute does not contain provision for payment of pension and there was no approval of the State Government for its payment and, therefore, the Education Department, Government of Bihar would not pay pension. He contended that even after the aforesaid decision taken on 29.04.2015, the Institute requested the State Government vide different letters to remove the above ban and to release funds for payment of pension to its employees. He submitted that the Institute would certainly pay pension to its retired employees provided the funds are received from the State Government for such purpose.

9. He further highlighted that the Institute meets its financial liability from the grants of the State Government and the Indian Council of Social Science Research, New Delhi (for short 'ICSSR') and from its own earnings. The State Government had been



providing financial assistance to the Institute in the form of grants since the beginning. He contended that both the State Government and the ICSSR do not release sufficient grants to meet the deficit of the Institute and its internal earnings are not much so as to meet its need. He contended that in past payment of pension and other retiral dues of the employees were being made from the grants received from the State Government. However, in view of the aforesaid letter dated 13.03.2014 the fund allocated by the State Government cannot be diverted for payment of pension to the retired employees. He contended that though the Institute is not opposed to the payment of pension to its employees, its financial condition is not such that it would pay the same without grants from both the State Government and the ICSSR in this regard. He reiterated that the Institute has sincerely tried to persuade the State Government through correspondences and personal meetings to release funds for payment of pension to its employees but the same has not been done and, therefore, the Institute is unable to pay pension to its employees.

10. In reply to the stand of the State and the Institute, Mr. Kripa Nand Jha, learned counsel for the petitioners submitted that the respondents have not denied that the petitioners were getting their pension/family pension from the respective dates of their entitlement. He contended that it is also not denied that the pension scheme was



implemented by the Institute by virtue of decision dated 15.02.1985 taken by the Board, which is the supreme governing body of the Institute under the Act. According to him, the Board has been vested with the power to make rules and regulations under Sections 16 and 17 of the Act and the decision dated 15.02.1985 was taken by the Board in exercise of the power vested in it under Section 17 of the Act. He contended that the Secretary, Human Resources Development Department and the Secretary, Finance Department of the State Government are ex-officio members of the Board of Control. They were party to the aforesaid decision dated 15.02.1985 and, therefore, it was well within the knowledge of the State Government that the pension scheme was introduced and implemented by the Institute but neither the State Government nor the ICSSR ever objected to the said scheme for long. Therefore, the State Government cannot absolve itself from the liability of the Institute keeping in view the the provisions prescribed under sub-sections (1) and (2) of Section 8 of the Act.

11. I have heard learned counsel for the parties and carefully perused the record.

12. It would be evident from the rival arguments advanced on behalf of the parties and the pleadings made in the writ application and the respective counter affidavits filed on behalf of the



respondents that the relevant facts of the case are not in dispute. The Institute, a statutory and autonomous body was established by the Government of Bihar through legislation on 8th October, 1964. It is governed by the Board and funded by the State Government and the ICSSR, New Delhi and its own resources.

13. Keeping in mind the nature of dispute raised in the present writ application, at this juncture, I deem it appropriate to take into consideration the relevant provisions of 'the Act' and 'the rules'.

14. Section 4 of 'the Act' prescribes the purposes and powers of the Institute and reads as under :-

“4. Purposes and powers of the Institute.

The purposes and powers of the Institute shall be the following, namely:-

- (a) to undertake teaching and research in social sciences;
- (b) to undertake study of specific problems, if and when required by the State Government or the Central Government or any other agency;
- (c) to provide for training and research facilities in social, economic and administrative problems.
- (d) to publish journals, books, pamphlets, brochures and such other materials as may be deemed necessary;
- (e) to organize lectures, seminars and conferences; and
- (f) to undertake other allied activities.

15. Section 5 prescribes for the constitution of the Board and Section 6 prescribes the functions of the Board.

16. The functions of the Board prescribed under Section 6 of



‘the Act’ are as under :-

“(1) The Board shall be the supreme governing body of the Institute and shall exercise all the powers of the Institute.

(2) Subject to the provisions of this Act the Board shall, in particular -

(a) hold, control and administer the property and the funds of the Institute;

(b) determine the form, provide for the custody and regulate the use of the common seal of the Institute;

(c) determine and regulate all matters concerning the Institute;

(d) administer any funds placed at the disposal of the Board for specific purposes;

(e) create posts and appoint officers and other employees of the Institute and define their duties and provide for the filling of temporary vacancies:

Provided that no post the total employment of which exceeds Rs.1,000/- per month shall be created without the previous sanction of the State Government;

(f) have power to accept transfers on behalf of the Institute of any movable or immovable property to and for the purposes of the Institute.”

17. It is apparent from the above extract that even though the Board has been made the supreme governing body of the Institute, it has not been vested with the powers to create post, the total emolument of which exceeds Rs.1000/- per month, without the previous sanction of the State Government. Evidently, the purpose of the said provision is that the Board ought not to create any financial liability of perpetual nature which may exceed Rs.1000/- per month.



18. Section 8 of 'the Act' deals with the contributions to be made to the Institute by the State Government and reads as under :-

“8. Payment to Institute. –

- (1) The State Government shall contribute to the Institute a sum of two lakhs of rupees in each financial year for the maintenance of the Institute.
- (2) The State Government may contribute from time to time such additional sums to the Institute as it may deem fit for special items of research or educational work, publication, buildings and for the proper maintenance and development of the Institute.”

19. It is manifest from sub-section (1) that the State Government must contribute a sum of Rs.2,00,000/- in each financial year for the maintenance of the Institute. Sub-section (2) provides for optional contribution by the State Government for special items of research or educational work, publication, buildings and for the proper maintenance and development of the Institute. Apparently, the grants made by the State Government shall be towards establishment cost upon the non-plan head.

20. Section 9 of 'the Act' provides for establishment of a fund which shall be vested in the Institute and reads as under :-

“9. The Institute Fund : (1) There shall be established a Fund to be called the Anugraha Narayan Sinha Institute Fund which shall be vested in the Institute to which shall be credited-

- (a) the balance, if any, standing to the credit of the Anugraha Narayan Sinha Institute of Social Studies, Patna, on the date of commencement of this Act;



- (b) all moneys contributed to the Institute by the State Government;
- (c) all moneys received by or on behalf of the Institute from the Central Government;
- (d) all moneys received by or on behalf of the Institute by way of grants, gifts, donations, benefactions, bequests or transfers;
- (e) all interests and profits arising from any transaction on connection with any money belonging to the Institute;
- (f) proceeds from the sale of the journals, pamphlets and books; and
- (g) all moneys received by the Institute in any other manner or from any other source.

(2) All moneys credited to the Fund shall be deposited or invested in such manner as the Institute may, with the approval of the State Government, decide.

(3) The Fund shall be applied towards meeting the expenses of the Institute including expenses incurred in the exercise of its powers and discharge of its functions under this Act.”

(emphasis mine)

21. It would be evident from sub-section (2) of the above extract that the Fund of the Institute has to be deposited or invested by the Institute only with the approval of the State Government. Further in view of sub-section (3), the fund has to be applied towards meeting the expenses of the Institute including expenses incurred in the exercise of its powers and discharge of its functions under this Act.

22. Section 10 of ‘the Act’ is quite relevant. It deals with the



budget of the Institute and reads as under :

“10. Budget :

- (1) The Director shall, on or before the tenth day of August each year, cause to be prepared and laid before the Board, in such form as may be prescribed by the Board, the budget estimate of the income and expenditure of the Institute for the next financial year.
- (2) The Board shall, as soon as may be after the tenth day of August but not later than the first day of the following September, examine and approve the estimate with or without modification as it may deem fit and shall forthwith submit a copy thereof to the State Government.
- (3) The Board may from time to time during the financial year reduce the amount of any item of budget grant or transfer such amount or a portion thereof to any other item of budget grant:

Provided that the Board shall have no power to transfer any non-recurring grant for recurring expenditure.

Provided further that the Board shall have no power to transfer from one item to another item an amount exceeding 20 per cent of the original grant under any item.”

23. It is manifest from the above extract that the first proviso to sub-section (3) mandates that the Board shall have no power to transfer any non-recurring grant for recurring expenditure. Further, the second proviso to sub-section (3) stipulates that the Board shall have no power to transfer from one item to another item an amount exceeding 20 percent of the original grant under any item. Thus, it would be of salience to note that if the grants made by the State



Government were not made for payment of pension, the Board has not been vested with the power to transfer the funds received from the State for recurring expenditure under the head pension.

24. At this stage, it is of utmost relevance to mention that Section 16 of 'the Act' confers jurisdiction upon the Board to make rules to carry out the purposes of the Act. It reads as under :-

“16. Power to make rules :

(1) The Board may, by notification in the Official Gazette, after previous publication, make rules not inconsistent with the provisions of the Act, to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers such rules may provide for-

- (a) the granting of annuities and gratuities out of the fund of the Institute;
- (b) the creation and management of a provident fund for compelling contribution thereto on the part of their officers and employees, and for supplementing such contribution out of the Fund of the Institute;
- (c) for the management of the finances and accounts of the Institute; and
- (d) for the exercise of such powers and the performance of such duties as may be entrusted by the Board to the Director and other officers and employees of the Board.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the



rule should not be made, the rule shall thereafter have effect only in such modified form or be no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

25. From the rule making power outlined under Section 16 of the Act, there can be no doubt that it is not open to the Board to make rules which may be inconsistent with the provisions of ‘the Act’. Further, sub-section (3) of Section 16 mandates that the rule made under this Section for carrying out the purposes of ‘the Act’ should be placed before each Houses of the State Legislature and only if both the houses agree in making any modification in the rule, the rule shall have effect in such modified form and if the legislature disagrees, such modification shall have no effect. The aforesaid provision makes it amply clear that the Board is not the supreme body to take any kind of decision or make any changes in ‘the rules’ without prior approval of the State Government. Its power to make rules is subject to the approval of the State Government.

26. Section 17 of ‘the Act’ confers power upon the Board to make regulations for specifying the terms and conditions of service of the employees appointed by the Board and reads as under :-

“17. Power to make regulations. - The Board may make regulations consistent with this Act and the rules made thereunder for-

(a) regulating the meetings of the Board and the



- procedure for conducting business thereat;
- (b) determining the qualifications of officers and employees of the Board and prescribing methods of their recruitment;
- (c) specifying the terms and conditions of service of the employees appointed by the Board; and
- (d) regulating the manner in which the advice of the consultants be obtained by the Board.”

27. From perusal of Section 17 of the Act, it would be evident that the power conferred upon the Board under Section 17 of ‘the Act’ to make regulations has to be consistent with ‘the Act’ and ‘the rules’.

28. Rule 9 of ‘the rules’ deals with maintenance of provident fund by the Institute, contribution of employees and contribution made by the Institute and reads as under :-

“9. The Institute shall maintain a fund to be called the Institute Provident Fund in Saving Bank Account in the State Bank of India or in scheduled bank approved by the Board in favour of Individual officer and employee of the Institute but pledged with and to be operated upon by the Director in which shall be credited.

(i) The Subscriber’s Subscription @ 10 paise per rupees per month of his pay

(ii) Contribution made by the Institute

(iii) The Institute shall contribute to the Fund every month an amount equal to the contribution of each employee subject to a maximum of 10% of salary of the employee. An interest allowed by the Bank on the subscriber’s subscriptions and on the Institute’s contribution.

(iv) And interest on advance taken by the



subscriber.”

29. Rule 34 of the Rules of Service Conditions framed under Clause 16 of Anugraha Narayan Sinha Institute of Social Studies Regulation 1966 reads as under :-

“ **(34)**
Gratuity

Such employees of the Institute working on substantive posts as have put in a minimum of ten years of continuous service shall be entitled to gratuity at the rate of 15 days’ substantive pay calculated on the basis of last substantive pay for each year of service excluding the period of leave without pay, but subject to a maximum of 15 times of the last substantive pay, or a sum of Rs.30,000/- whichever is less.

Provided, provision under this clause shall be deemed to be operative only after the Board of Control passed special orders for its enforcement with such modifications, if any, as it may deem proper.”

30. The proviso to the aforesaid Rule 34 makes the provision for gratuity for the employees to be operative only after special orders to be passed by the Board for its enforcement.

31. It is well settled law that the power delegated by the statute is limited by its terms and subordinate to its objects. The rules and regulations are not comprised in delegated legislation. The power to make subordinate legislation is derived from the enabling Act and is fundamental with the delegate on whom such power is vested as to



act within the limits of the authority conferred by ‘the Act’.

32. As discussed above, under Section 16 of the Act the Board has been provided with the power to make rules to carry out the purposes of ‘the Act’. Further, rule 17 confers jurisdiction upon the Board to make regulations consistent with ‘the Act’ and ‘the rules’ made thereunder. Since the statutory rules do not provide for pension rather provide for Contributory Provident Fund and the Staff Service Condition Rules provide for gratuity, any change to the substantive rules especially creating financial liability of perpetual nature could not have been made by the Board without having approval of the State Government.

33. At this stage, I must record that it is an admitted position of fact that the Board of the Institute in its meeting held on 15.02.1985 resolved to adopt the scheme of retirement benefits for its employees with effect from 1st February, 1985. It would be apt to extract relevant portion of the resolution taken by the Board on 15.02.1985 :-

“.... The Board accepted the recommendation of the Committee on the retirement benefits dated 11.02.1985 and decided that the scheme as prepared may be implemented, provided that the scheme as reported would be operated from the Institute resources and that no separate grant would be sought for it from the Government....”

(emphasis mine)



34. Apparently, the Board resolved that the financial liability of the pension scheme so implemented would be borne by the Institute from its own resources. It also resolved that no separate grant would be sought from the State Government in this regard. The State Government has taken a firm stand that the Institute had never taken its approval regarding diversion of funds contributed to it by the State Government. Though a plea has been taken that since the Secretaries of the Human Resources Development Department and the Finance Department were the ex-officio members of the Board, it would be deemed that the State Government had approved the resolution taken by the Board, the same cannot be accepted in absence of any evidence that there was an express approval of the State Government in this regard.

35. Though the petitioners have placed heavy reliance on the aforesaid resolution dated 15.02.1985 passed by the Board in order to substantiate their vested right to receive pension/family pension, in my considered opinion, the resolution having no statutory force cannot override the law.

36. It is well settled law that the resolution which runs contrary to the statutory Act and the rules cannot be enforced. There being no provision for pension either under 'the Act' or in 'the rules', the resolution adopted by the Board, is inconsistent with 'the Act' and



‘the rules’ and cannot be taken note of as it amounts to committing fraud upon the statute and smacks colourable exercise of power by the Board.

37. In sum and substance, the action of the Board in resolving to adopt the scheme of retirement benefits for the employees of the Institute in its meeting held on 15.02.1985 as per the provisions contained in the retirement benefits statute of the Patna University with effect from 01.02.1985 and implementing the same by diverting the grants received under the non-plan head from the State Government without taking its prior approval, was not in consonance with the law. In that view of the matter, neither the respondent State nor the Institute can be directed to shoulder the financial liability of recurring payment of pension/family pension to the petitioners of this case. A writ of mandamus can be issued only when there exists a legal right enforceable in the writ petitioners and there is corresponding legal obligation on the State.

38. As I have already held that the aforesaid resolution dated 15.02.1985 issued by the Board was inconsistent with ‘the Act’ and ‘the rules’, the petitioners were not vested with any legal right and hence, there is no corresponding legal obligation on the respondents.

39. Furthermore, a writ of mandamus cannot be issued to the authorities of the State to act contrary to law. Only because an



illegality has been committed by the respondent Institute in grant of pension/family pension to the petitioners for last few years, the same cannot be directed to be perpetuated by an order of the Court.

40. Before I part, I deem it necessary to record herein that the ambit and scope of exercise of jurisdiction by the State Human Rights Commission, a statutory body, is well defined. The Commission can only enquire into a complaint received by it and make recommendations to the concerned authority or the Government. It lacks jurisdiction to issue writ of any nature.

41. In view of the foregoing discussions, I see no merit in this writ application. It is accordingly dismissed.

42. However, the dismissal of the writ application shall not preclude the petitioners from approaching the respondents in order to raise any claim which may be subsisting in respect of their rights arising out of ‘the Act’ or ‘the rules’ framed thereunder.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	AFR
CAV DATE	10-01-2017
Uploading Date	24-06-2017
Transmission Date	

