IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2328 of 2016

IN

Civil Writ Jurisdiction Case No. 5326 of 2008

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1. The State of Bihar
2. The Director of Industries, Govt. of Bihar, Patna
3. The Industrial Development Commissioner Cum Secretary Department of Industries, Govt. of Bihar, New Secretariat, Patna
4. The Secretary, Finance, Govt. of Bihar, Patna . ... Appellants

Versus

1. Loknath Singh @ Lok Nath Prasad Singh, S/o Late Shiv Shankar Prasad Singh, R/o village - Chintamanpur (Kataru), P.S. Patedhi Belsar, District - Vaishali

… …… Petitioner-Respondent.

2. The Bihar Industrial Area Development Authority through its Chairman, Gandhi Maidan, Patna
3. The Managing Director of Bihar Industrial Area Development Authority, Gandhi Maidan, Patna
4. The Director General, Provident Fund, Pant Bhawan, Patna
5. The Accountant General (A&E) - II Bihar, Patna

.... Respondents- Respondents

With

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Letters Patent Appeal No. 1024 of 2015

IN

Civil Writ Jurisdiction Case No. 12057 of 2013

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1. The State of Bihar through its Chief Secretary.
2. The Finance Commissioner, Finance Department, Govt. of Bihar, Old Secretariat, Patna.
3. The Industrial Development Commissioner cum the Principal Secretary, Industries Department, Govt. of Bihar, New Secretariat, Patna.
4. The Additional Secretary, Industries Department, Govt. of Bihar, New Secretariat, Patna.
5. The Director, Directorate of Industries, Govt. of Bihar, New Secretariat, Patna.
6. The Additional Director, the Directorate of Industries, Govt. of Bihar, New Secretariat, Patna.

.... Appellants

Versus

1. (i) Bachhi Devi, wife of late Ganesh Choudhary
   (ii) Sanjeev Choudhary, son of late Ganesh Choudhary
   (iii) Rajiv Kumar Choudhary, son of late Ganesh Choudhary
   (iv) Shambhu Choudhary, son of late Ganesh Choudhary
   All residents of village and P.O. Nehra, P.S.- Manigachhi, District- Darbhanga.
   (v) Munmun Devi, wife of Hiendra Mishra, resident of village, P.O. and P.S.- Manigachhi, District- Darbhanga.
   (vi) Pintu Devi, wife of Seva Nand Jha, resident of village- Brahampur, P.O. and P.S.- Sakri, District- Darbhanga
   (vii) Kamni Jha, wife of Rakesh Jha, resident of village, P.O. and P.S.- Ghanshyampur, District- Darbhanga

…….Petitioner-Respondent.

2. The Managing Director, Bihar Industrial Area Development Authority, Indira Bhawan, Ramcharitra Path, Patna.
3. The Secretary, Bihar Industrial Area Development Authority, Indira Bhawan, Ramcharitra Path, Patna.
4. The working Director, Regional Office of Bihar Industrial Area Development Authority, Bela, Muzaffarpur.
5. The Chief Accounts Officer cum Budget Officer, Regional Office of Bihar Industrial Area Development Authority, Bela, Muzaffarpur.
6. The Accountant General, Govt. Of Bihar, Patna

.... Respondents/ Respondents

With

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Civil Writ Jurisdiction Case No. 6550 of 2000

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1. Shiv Kant Jha, Son of Late Dhanushdhari Jha, resident of village and P.O.- Susta Madhopur, P.S.- Sadar, District- Muzaffarpur.

2 (i) Smt. Sushila Devi, wife of late Jagmohan Mahto
(ii) Smt. Manju Devi, wife of Santosh Kumar,

3. Shivnandan Paswan, son of late Jagu Paswan, resident of village and P.O.- Susta Madhopur, P.S.- Sadar, District- Muzaffarpur
4. Daya Shankar Pandey, son of Late Radha Krishna Pandey, resident of Village- Pandey Tola, P.S.- Sikarpur, District- West Champaran.
5. Shambhu Kishor Jha, son of Late Kusheshwar Jha, resident of Village and Post- Dhabouli, P.s.- Sour Bazar, District- Saharsa.

6. (i) Bachhi Devi, wife of late Ganesh Choudhary
(ii) Sanjeev Choudhary, son of late Ganesh Choudhary
(iii) Rajiv Kumar Choudhary, son of late Ganesh Choudhary
(iv) Shambhu Choudhary, son of late Ganesh Choudhary
All residents of village and P.O. Nehra, P.S.- Manigachhi, District- Darbhanga.
(v) Munmun Devi, wife of Hiendra Mishra, resident of village, P.O. and P.S.- Manigachhi, District- Darbhanga.
(vi) Pintu Devi, wife of Seva Nand Jha, resident of village- Brahampur, P.O. and P.S.- Sakri, District- Darbhanga
(vii) Kamni Jha, wife of Rakesh Jha, resident of village, P.O. and P.S.- Ghanshyampur, District- Darbhanga

……….. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary-cum-Industrial Development Commissioner, Industries Department, Govt. of Bihar, New Secretariat, Patna
3. The Special Secretary, Industry Department, Govt. of Bihar, New Secretariat, Patna.
4. The Director, Directorate of Industries, Govt. of Bihar, New Secretariat, Patna
5. The Additional Director, Directorate of Industries, Govt. of Bihar, New Secretariat, Patna.
6. The Bihar Industrial Area Development Authority through its Secretary, Indira Bhawan, 6th Floor, Patna.-1.
7. The Managing Director, Bihar Industrial Area Development Authority, Indira Bhawan, 6th Floor, Patna.-1
8. The Executive Director, Regional office of Bihar Industrial Area Development

Authority at Bela, Muzaffarpur.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 6465 of 2003

Shiv Kant Jha, Son of Late Dhanushdhari Jha, resident of village and P.O.- Susta Madhopur, P.S.- Sadar, District- Muzaffarpur. .... Petitioner

Versus

1. The State of Bihar
2. The Finance Commissioner, Finance Department, Govt. of Bihar, Old Secretariat, Patna.
3. The Industrial Development Commissioner cum the Secretary, Industries Department, Govt. of Bihar, New Secretariat, Patna.
4. The Additional Secretary, Industries Department, Govt. of Bihar, New Secretariat, Patna.
5. The Director, Directorate of Industries, Govt. of Bihar, New Secretariat, Patna.
6. The Additional Director, the Directorate of Industries, Govt. of Bihar, New Secretariat, Patna.
7. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.
8. The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna
9. The Working Director, Regional Office of Bihar Industrial Area Development Authority, Bela, Muzaffarpur
10. The Chief Accounts Officer-cum-Budget Officer, Regional Office of Bihar Industrial Area Development Authority, Bela, Muzaffarpur
11. The Accountant General, Govt. of Bihar, Patna
12. The Director, Directorate of Provident Fund, Pant Bhawan, Bihar, Patna

.... Respondents

With

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Civil Writ Jurisdiction Case No. 6564 of 2003

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Daya Shankar Pandey, son of Late Radha Krishna Pandey, resident of village-Pandey Tola, P.S.- Shikarpur, District- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Finance Commissioner, Finance Department, Govt. of Bihar, Old Secretariat, Patna.
3. The Industrial Development Commissioner cum the Secretary, Industries Department, Govt. of Bihar, New Secretariat, Patna.
4. The Additional Secretary, Industries Department, Govt. of Bihar, New Secretariat, Patna.
5. The Director, Directorate of Industries, Govt. of Bihar, New Secretariat, Patna.
6. The Additional Director, the Directorate of Industries, Govt. of Bihar, New Secretariat, Patna.
7. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.

8. The Secretary, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna
9. The Working Director, Regional Office of Bihar Industrial Area Development Authority, Bela, Muzaffarpur
10. The Chief Accounts Officer-cum-Budget Officer, Regional Office of Bihar Industrial Area Development Authority, Bela, Muzaffarpur
11. The Accountant General, Govt. of Bihar, Patna
12. The Director, Directorate of Provident Fund, Pant Bhawan, Bihar, Patna

…....Respondent/s

With

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Civil Writ Jurisdiction Case No. 12057 of 2013

1. Bachchi Devi wife of Late Ganesh Choudhary.
2. Sanjeev Choudhary, son of Late Ganesh Choudhary.
3. Rajiv Kumar Choudhary, son of Late Ganesh Choudhary.
4. Shambhu Choudhary, son of Late Ganesh Choudhary

All are resident of village and P.O. Nehra, P.S.- Manigachi, District-Darbhanga.

5. Munmun Devi, wife of Hitendra Mishra, resident of village Makranda, P.O. & P.S- Manigachi, District-Darbhanga.
6. Pintu Devi, wife of Seva Nand Jha, resident of village-Brahampur, P.O & P.S-Sakri, District-Darbhanga.
7. Kamini Jha, wife of Rakesh Jha, resident of village+ P.O+P.S.-Ghanshyampur, District-Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar Through Its Chief Secretary
2. The Finance Commissioner, Finance Department, Govt. of Bihar, Old Secretariat, Patna
3. The Industrial Development Commissioner-Cum-The Principle Secretary, Industries Department, Govt. Of Bihar, New Secretariat, Patna
4. The Additional Secretary, Industries Department, Govt. of Bihar, New Secretariat, Patna
5. The Director, Directorate of Industries, Govt. Of Bihar, New Secretariat, Patna
6. The Additional Director, the Directorate of Industries, Govt. of Bihar, New Secretariat, Patna
7. The Managing Director, Bihar Industrial Area Development Authority, Indira Bhawan, Ram Charitra Path, Patna
8. The Secretary, Bihar Industrial Area Development Authority, Indira Bhawan, Ram Charitra Path, Patna
9. The Working Director, Regional Office of Bihar Industrial Area Development Authority, Bela , Muzaffarpur
10. The Chief Accounts Officer-Cum-Budget Officer, Regional Office of Bihar Industrial Area Development Authority, Bela, Muzaffarpur
11. The Accountant General, Govt. of Bihar, Patna. .... Respondent/s

With

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Civil Writ Jurisdiction Case No. 11919 of 2007

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Jagdish Prasad, S/o late Ganesh Hazzam, Resident of Mohalla- Sohanipatti, Buxar, Police Station-Buxar (Town) P.O- Sohani Patti Bazar, District-Buxar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Managing Director.
3. Secretary, Both Bihar Industrial Area Development Authority, (BIADA), 6/7 floor Indira Bhawan, Ram Charitra Singh Path, Bailey Road, Patna.
4. Director of Industries, New Secretariat, Bihar, Bailey Road, Patna.
5. Chief Secretary, Government of Bihar, New Secretariat, Bailey Road, Patna.
6. Area Officer, BIADA, Industrial Area, Buxar, District-Buxar.
7. Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

(In LPA No.2328 of 2016)

For the Appellant/s : Mr. P. K. Verma, AAG-3
Mr. Ujjwal Kumar Sinha, AC to AAG-3

For the Respondent/s : Mr. Bharat Lal, Advocate
Mr. Rabindra Kumar, Advocate

(In LPA No.1024 of 2015)

For the Appellant/s : Mr. P. K. Verma, AAG-3
Mr. Nand Kumar Singh

For the Respondent/s : Mr. Prem Kumar Jha, Advocate
Mr. Rajesh Kumar Jha, Advocate

(In CWJC No.6550 of 2000)

For the Petitioner/s : Mr. Prem Kumar Jha, Advocate
Mr. Rajesh Kumar Jha, Advocate

For the Respondent/s : Mr.
Mr. S.J.Rahman
Mr. Kameshwar Kumar
Mr. (Sc16)
Mr. Sharad Kumar Sinha
Mr. Lalit Kishore

(In CWJC No.6465 of 2003)

For the Petitioner/s : Mr.
Mr. Arun Kumar Jha

For the Respondent/s : Mr.
Mr. Madan Mohan-1
Mr. Sharad Kumar Sinha
Mr. Lalit Kishore

(In CWJC No.6564 of 2003)

For the Petitioner/s : Mr. Prem Kumar Jha, Advocate
Mr. Rajesh Kumar Jha, Advocate

For the Respondent/s : Mr.
Mr. Jagannath Jha
Mr. J.P.Karn
Mr. Sharad Kumar Sinha

(In CWJC No.12057 of 2013)

For the Petitioner/s : Mr. Prem Kumar Jha, Advocate
Mr. Rajesh Kumar Jha, Advocate

For the Respondent/s : Mr.

(In CWJC No.11919 of 2007)

For the Petitioner/s : Mr.
Mr. Ravindrajee Sahay

For the Respondent/s : Mr. Lal S. N. Rai, AC to G.P.-2
For the Accountant Gen. : Mr. Ram Nivash Singh, Advocate
For BIADA : Mr. Piyush Lall, Advocate
Mr. Yashraj Bardhan, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 31-08-2017

The Social Welfare State, which professes social security as its top priority, is the appellants in this case against the order allowing the claim of the writ petitioner for grant of pro-rata pension in view of the admitted factual position that the petitioners have completed about 12 years of service under the State Government and as per the amended Rules, 10 years of service is qualifying period for grant of pension. These intra Court appeals have been filed notwithstanding the fact that similar direction for grant of Pro-rata pension issued by the writ Courts in other cases have attained finality and have been gracefully obeyed and benefits of post retrial dues were granted to almost all similarly circumstanced employees retired after 31.03.1980 while working on the transferred department. The absurdity in the approach of the appellants can be fathomed from the facts that in C.W.J.C. No.12057 of 2013, they preferred appeal against the direction of writ court for grant of pro-rata pension but in the connected writ petition bearing C.W.J.C. No. 11919 of 2007 the State in identical fact situation Jagdish Prasad allowed Pro rata pension without any demur.

2. In both these appeals, the facts are not in dispute that the writ petitioners have completed more than 10 years. The only rub is that whether they are entitled to the benefit of the resolution of the Finance Department no. 3014 dated 31.07.1980 whereby the minimum pensionable service was reduced from 15 years to 10 years or not.

3. Mr. P.K. Verma, learned Additional Advocate General appearing on behalf of the appellants submitted that the resolution of the Finance Department no. 3014 dated 31.07.1980 is prospective in nature and will not apply in the case of these petitioners, who have worked under the State Government prior to 31.03.1980 and have retired from transferred place, the benefit under the scheme of resolution of the Finance Department with regard to minimum qualifying period of pensionable service is not available to these petitioners, as they were transferred to different authorities before 31.03.1980. Thus, in both these two appeals, the question for adjudication is construction of the resolution of the Finance Department dated 31.07.1980. The relevant Clause 18 and 20, which require construction for the purpose of deciding the present appeals are set out below:

> "18. न्यूनतम पेंशन प्रदायी सेवा – वर्तमान नियम के अनुसार स्थायी सरकारी सेवक/अस्थायी सरकारी सेवक के लिए क्रमशः न्यूनतम पेंशन प्रदायी सेवा 10 एवं 15 वर्ष निर्धारित है। अब निर्णय लिया गया ह कि दोनों श्रेणी के लिये 10 वर्ष की न्यूनतम पेंशन प्रदायी सेवा मानी जायेगी।
>
> 20. यह आदेश तिथि 31 मार्च 1980 को या उसके बाद सेवा निवृत होने वाले सरकारी सेवकों के लिए लागू हागा। परन्तु अभी जो पहले के पेंशन के मामल अनिष्पादित हैं उन पर भी इस आदेश में केवल निहित प्रक्रिया लागू होगी।"

4. Earlier the State Government was maintaining two standards for minimum qualifying pension of service. Ten years minimum qualifying service was prescribed for grant of pensionary benefits for permanent Government servant, whereas for temporary government servant, the qualifying period was prescribed as 15 years. This dual standard in the matter of qualifying pensionable service was considered by the State Government being discriminatory and as such to make the condition of qualifying service for pension similar for permanent and temporary employees, the State Government decided to prescribe 10 years minimum qualifying service for grant of pension for both class of employees i.e. permanent or temporary. Admittedly, this kind of amendment as

to qualifying period for grant of pension was introduced with a view to do away discrimination and dual standard and to ensure the equality clause guaranteed under the Constitution of India. Clause 20 of the Circular dated 31.07.1980, whereby it has been stipulated that this decision is effective for the government servant, who retired on 31.03.1980 or thereafter, it further clarifies that this will apply to all such cases of pension, which was indecisive. Referring to Clause 20 of the circular/resolution of the Finance Department dated 31.07.1980, learned AAG submitted that in view of the cut off date 31.03.1980, the writ petitioners are not entitled to pension on pro-rata basis, as they have not completed the qualifying period of 15 years of government service in view of the fact that before cut off date of 31.03.1980, their services have been transferred to BIADA where they have been absorbed as regular employee vide order of the Director of Industry Department dated 30.11.1978 and they retired not as employees of the State Government on 30.11.2003, but from the transferred service in BIADA. Mr. P. K. Verma, the learned AAG submitted that the resolution of the Finance Department is prospective in nature and cannot be made retrospective and as such the benefit of reduced qualifying period for grant of pro-rata pension is not applicable to the case of the writ petitioners.

5. Per contra, Mr. Prem Kumar Jha, learned counsel appearing on behalf of the writ petitioners has placed reliance on rule 109 of the Bihar Pension Rules, which reads as follows:

> "109. When a government servant is transferred from pensionable Government service to a non-pensionable establishment one cannot be granted any pension or gratuity admissible to him for the qualifying portion of his service until actually he retires from the non-pensionable establishment to which he is transferred."

6. Referring to Rule 109 of the Bihar Pension Rules, Mr. Jha submitted that under the scheme of Bihar Pension Rules, when a government servant is transferred from pensionable Government service to a non-pensionable establishment one cannot be granted any pension or gratuity admissible to him for the qualifying portion of his service until actually he retires from the non-pensionable establishment to which he is transferred and as such on the date of superannuation on 30.11.2003, the case of the petitioners is to be treated as pending for the purpose of decision in terms of the resolution of the Finance Department dated 31.07.1980. He further submitted that pension is a social security measure and being the beneficent scheme it requires purposive interpretation and

liberal construction.

7. The Apex Court has held out in numerous cases that the pension is a right and not bounty. Considering the objective of social security behind grant of pension and family pension, Courts have always adopted liberal approach in construing the scheme of pension for the benefit of the employees or the beneficiary of pension /family pension. The Apex Court in the case of Deokinandan Prasad has categorically held out that pension is a right and not a bounty. This view was reiterated time and again by the Apex Court including in **D.S. Nakara and others Vs. Union of India and others**, reported in **(1983) 1 SCC 305**, considering the objective behind grant of pension the Apex Court in the aforesaid case deprecated the arbitrary fixation of artificial cut off date. To under stated the object of Pension Scheme and the objective of Welfare State the Apex Court judgment in D.S. Nakara is settler. The relevant paragraphs of the judgment of Apex Court useful in this regard is quoted below:

> "**20.** The antequated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deokinandan Prasad* v. *State of Bihar, reported in (1971) 2 SCC 330* wherein this Court authoritatively ruled that pension is a right

and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab* v. *Iqbal Singh, reported in (1976) 2 SCC 1.*

21. There are various kinds of pensions and there are equally various methods of funding pension programmes. The present enquiry is limited to non-contributory superannuation or retirement pension paid by Government to its erstwhile employee and the purpose and object underlying it. Initially this class of pension appears to have been introduced as a reward for loyal service. Probably the alien rulers who recruited employees in lower echelons of service from the colony and exported higher level employees from the seat of Empire, wanted to ensure in the case of former continued loyalty till death to the alien rulers and in the case of latter, an assured decent living standard in old age ensuring economic security at the cost of the colony.

22. In the course of transformation of society from feudal to welfare and as socialistic thinking acquired respectability. State obligation to provide security in old age, an escape from undeserved want was recognised and as a first step pension was treated not only as a reward for past service but with a view to helping the employee to avoid destitution in old age. The quid pro quo was that when the employee was physically and mentally alert, he rendered unto master the best, expecting him to look after him in the fall of life. A retirement system therefore exists solely for the purpose of providing benefits. In most of the plans of retirement benefits, everyone who qualifies for normal retirement receives the same amount (see *Retirement Systems for Public Employees* by Bleakney, p. 33).

23. As the present case is concerned with superannuation pension, a brief history of its initial introduction in early stages and continued existence till today may be illuminating. Superannuation is the most descriptive word of all but has become obsolescent because it seems ponderous. Its genesis can be traced to the first Act of Parliament (in U.K.) to be concerned with the provision of pensions generally in the public offices. It was passed in 1810. The Act which substantively devoted itself exclusively to the problem of superannuation pension was Superannuation Act of 1834. These are landmarks in pension history because they attempted for the first time to establish a comprehensive and uniform scheme for all whom we may now call civil servants. Even before the 19th century, the problem of providing for public servants who are unable, through old age or incapacity, to continue working, has been recognised, but methods of dealing with the problem varied from society to society and even occasionally from department to department.

24. A political society which has a goal of setting up of a welfare State, would introduce and has in fact introduced as a welfare measure wherein the retiral benefit is grounded on "considerations of State obligation to its citizens who having rendered service during the useful span of life must not be left to penury in their old age, but the evolving concept of social security is a later day development". And this journey was over a rough terrain. To note only one stage in 1856 a Royal Commission was set up to consider whether any changes were necessary in the system established by the 1834 Act. The Report of the Commission is known as "Northcote-Trevelyan Report". The Report was pungent in its criticism when it says that:

> "[I]n civil services comparable to lightness of work and the certainty of provision in case of retirement owing to bodily incapacity, furnish strong inducements to the parents and friends of sickly youths to endeavour to obtain for them employment in the service of the Government, and the extent to which the public are consequently burdened, first with the salaries of officers who are obliged to absent themselves from their duties on account of ill health, and afterwards with their pensions when they retire on the same plea, would hardly be credited by those who have not had opportunities of observing the operation of the system."

25. This approach is utterly unfair because in modern times public services are manned by those who enter at a comparatively very young age, with selection through national competitive examination and ordinarily the best talent gets the opportunity.

26. Let us therefore examine what are the goals that pension scheme seeks to subserve? A pension scheme consistent with available resources must provide that the pensioner would be able to live: (*i*) free from want, with decency, independence and self-respect, and (*ii*) at a standard equivalent at the pre-retirement level. This approach may merit the criticism that if a developing country like India cannot provide an employee while rendering service a living wage, how can one be assured of it in retirement? This can be aptly illustrated by a small illustration. A man with a broken arm asked his doctor whether he will be able to play the piano after the cast is removed. When assured that he will, the patient replied, "that is funny, I could not before". It appears that determining the minimum amount required for living decently is difficult, selecting the percentage representing the proper ratio between earnings and the retirement income is harder. But it is imperative to note that as self-sufficiency declines the need for his attendance or institutional care grows. Many are literally surviving now than in the past. *We owe it to them and ourselves that they live, not merely exist*. The philosophy prevailing in a given society at various stages of its development profoundly influences its social objectives. These objectives are in turn a determinant of a social policy. The law is one of the chief instruments whereby the social policies are implemented and

> "pension is paid according to rules which can be said to provide social security law by which it is meant those legal mechanisms primarily concerned to ensure the provision for the individual of a cash income adequate, when taken along with the benefits in kind provided by other social services (such as free medical aid) to ensure for him a culturally acceptable minimum standard of living when the normal means of doing so failed". (See *Social Security Law* by Prof. Harry Calvert, p. 1)

27. Viewed in the light of the present day notions pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are (*i*) as compensation to former members of the Armed Forces or their dependents for old age, disability, or death (usually from service causes), (*ii*) as old age retirement or disability benefits for civilian employees, and (*iii*) as social security payments for the aged, disabled, or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, rewards for service rendered, or as a means of promoting general welfare (see *Encyclopaedia Britannica*, Vol. 17, p. 575). But these views have become otiose.

28. Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in *Douge* v. *Board of Education (302 US 74)* a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.

29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

30. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them inane (see *American Jurisprudence*, 2d, 881).

31. From the discussion three things emerge: (*i*) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article

309 and clause (5) of Article 148 of the Constitution; (*ii*) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (*iii*) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to 10 months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.

33. Recall at this stage the Preamble, the flood light illuminating the path to be pursued by the State to set up a Sovereign Socialist Secular Democratic Republic. Expression "socialist" was intentionally introduced in the Preamble by the Constitution (Forty-second amendment) Act, 1976. In the objects and reasons for amendment amongst other things, ushering in of socio-economic revolution was promised. The clarion call may be extracted:

> "The question of amending the Constitution for removing the difficulties which have arisen in achieving the objective of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity, has been engaging the active attention of Government and the public for some time....
>
> It is, therefore, proposed to amend the Constitution to spell out expressly the high ideals of socialism ... to make the directive principles more

comprehensive...."

What does a Socialist Republic imply? Socialism is a much misunderstood word. Values determine contemporary socialism pure and simple. But it is not necessary at this stage to go into all its ramifications. The principal aim of a socialist State is to eliminate inequality in income and status and standards of life. The basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave. This amongst others on economic side envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism leaning heavily towards Gandhian socialism. During the formative years, socialism aims at providing all opportunities for pursuing the educational activity. For want of wherewithal or financial equipment the opportunity to be fully educated shall not be denied. Ordinarily, therefore, a socialist State provides for free education from primary to Ph.D. but the pursuit must be by those who have the necessary intelligence quotient and not as in our society where a brainy young man coming from a poor family will not be able to prosecute the education for want of wherewithal while the ill equipped son or daughter of a well-to-do father will enter the portals of higher education and contribute to national wastage. After the education is completed, socialism aims at equality in pursuit of excellence in the chosen avocation without let or hindrance of caste, colour, sex or religion and with full opportunity to reach the top not thwarted by any considerations of status, social or otherwise. But even here the less equipped person shall be assured a decent minimum standard of life and exploitation in any form shall be eschewed. There will be equitable distribution of national cake and the worst off shall be treated in such a manner as to push them up the ladder. Then comes the old age in the life of everyone, be he a monarch or a mahatma, a worker or a pariah. The old age overtakes each one, death being the fulfilment of life providing freedom from bondage. But here socialism aims at providing an economic security to those who have rendered unto society what they were capable of doing when they were fully equipped with their mental and physical prowess. In the fall of life the State shall ensure to the citizens a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and the enjoyable leisure, relieving the boredom and the humility of dependence in old age. This is what Article 41 aims when it enjoins the State to secure public assistance in old age, sickness and disablement. It was such a socialist State which the Preamble directs the centres of power — Legislative, Executive and Judiciary — to strive to set up. From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society is a long march but during this journey to the fulfilment of goal every State action whenever taken must be directed, and must be so interpreted, as to take the society one step towards the goal.

35. With this background let us now turn to the challenge posed in these petitions. The challenge is not to the validity of the pension liberalisation scheme. The scheme is wholly acceptable to the petitioners, *nay* they are ardent supporters of it, *nay* further they seek the benefit of it. The petitioners challenge only that part of the scheme by which its benefits are admissible to those who retired from service after a certain date. In other words, they challenge that the scheme must be uniformly enforced with regard to all pensioners for the purpose of computation of pension irrespective of the date when the government servant retired subject to the only condition that he was governed by the 1972 Rules. No doubt, the benefit of the scheme will be available from the specified date, irrespective of the fact when the concerned government servant actually retired from service.

36. Having set out clearly the society which we propose to set up, the direction in which the State action must move, the welfare State which we propose to build up, the constitutional goal of setting up a socialist State and the assurance in the Directive Principles of State Policy especially of security in old age at least to those who have rendered useful service during their active years, it is indisputable, nor was it questioned, that pension as a retirement benefit is in consonance with and in furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security of cradle to grave is assured at least when it is mostly needed and least available, namely, in the fall of life.

37. If such be the goals of pension, if such be the welfare State which we propose to set up, if such be the goals of socialism and conceding that any welfare measure may consistent with economic capacity of the State be progressively augmented with wider width and a longer canvas yet when the economic means permit the augmentation, should some be left out for the sole reason that while in the formative years of the nascent State they contributed their mite but when the fruits of their labour led to the flowering of economic development and higher gross national produce bringing in larger revenue and therefore larger cake is available, they would be denied any share of it? Indisputably, viewed from any angle pensioners for payment of pension form a class. Unquestionably pension is linked to length of service and the last pay drawn but the last pay does not imply the pay on the last day of retirement but average emoluments as defined in the scheme. Earlier average emoluments of 36 months' service provided the measure of pension because the pension was related to the average emoluments during 36 months just preceding retirement. By the liberalised scheme it is now reduced to average emoluments of 10 months preceding the date. Any one in government service would appreciate at a glance that with an average of 10 months it would be on the higher side on account of the two fortuitous circumstances that the pay scales, if one has not reached the maximum, permit annual increments and there are promotions in the last one or two years. With a view to giving a higher average the scheme was liberalised to provide for average emoluments with reference to last 10 months' service. Coupled with it, a slab system for computation is introduced and the ceiling is raised. This is liberalisation. Now, if the pensioners who retired prior to the specified date and had to earn pension on the average emoluments of 36 months' salary just preceding the date of retirement, naturally the average would be lower and they will be doubly hit because the slab system as now introduced was not available and the ceiling was at a lower level. Thus they suffer triple jeopardy viz. lower average emoluments, absence of slab system and lower ceiling.

38. What then is the purpose in prescribing the specified date vertically dividing the pensioners between those who retired prior to the specified date and those who retire subsequent to that date? That poses the further question, why was the pension scheme liberalised? What necessitated liberalisation of the pension scheme?

40. Therefore, let us proceed to examine whether there was any rationale behind the eligibility qualification. The learned Attorney-General contended that the scheme is one whole and that the date is an integral part of the scheme and the Government would have never enforced the scheme devoid of the date and the date is not severable from the scheme as a whole. Contended the learned Attorney-General that the Court does not take upon itself the function of legislation for persons, things or situations omitted by the legislature. It was said that when the legislature has expressly defined the class with clarity and precision to which the legislation applies, it would be outside the judicial function to enlarge the class and to do so is not to interpret but to legislate which is the forbidden field. Alternatively it was also contended that where a larger class comprising two smaller classes is covered by a legislation of which one part is constitutional, the court examines whether the legislation must be invalidated as a whole or only in respect of the unconstitutional part. It was also said that severance always cuts down the scope of legislation but can never enlarge it and in the present case the scheme as it stands would not cover pensioners such as the petitioners and if by severance an attempt is made to include them in the scheme it is not cutting down the class or the scope but enlarge the ambit of the scheme which is impermissible even under the doctrine of severability. In this context it was lastly submitted that there is not a single case in India or elsewhere where the court has included some category within the scope of provisions of a law to maintain its constitutionality.

41. The last submission, the absence of precedent need not deter us for a moment. Every new norm of socio-economic justice, every new measure of social justice commenced for the first time at some point of history. If at that time it is rejected as being without a precedent, the law as an instrument of social engineering would have long since been dead and no tears would have been shed. To be pragmatic is not to be unconstitutional. In its onward march law as an institution ushers in socio-economic justice. In fact, social security in old age commended itself in earlier stages as a moral concept but in course of time it acquired legal connotation. The rules of natural justice owed their origin to ethical and moral code. Is there any doubt that they have become the integral and inseparable parts of rule of law of which any civilised society is proud? Can anyone be bold enough to assert that ethics and morality are outside the field of legal formulations? Socio-economic justice stems from the concept of social morality coupled with abhorrence for economic exploitation. And the advancing society converts in course of time moral or ethical code into enforceable legal formulations. Overemphasis on precedent furnishes an insurmountable road-block to the onward march towards promised millennium. An overdose of precedents is the bane of our system which is slowly getting stagnant, stratified and atrophied. Therefore, absence of a precedent on this point need not deter us at all. We are all the more happy for the chance of scribbling on a clean slate.

8. The resolution of the Finance Department dated

31.07.1980 whereby the qualifying period has been reduced from 15 years to 10 years for temporary government employees is corrective in nature and as such it requires purposive interpretation, moreover, it does not indicate any special reason for fixing 31.03.1980, as the cut off date for extending the benefit of qualifying service for benefit of pension.

9. Considering the objective behind Finance Department resolution dated 31.07.1980 I am unable to accept the submission of the learned AAG that the resolution of the Finance Department dated 31.07.1980 is not applicable in the case of the writ petitioners, as they retired not as Government employees, but as employee absorbed in the transferred department. The qualifying period is relatable to all the temporary employees, who have completed 10 years of service and who retired after 31.03.1980. If one go by the objective behind reduction of the qualifying period from 15 years to 10 years as corrective measure for grant of pensionary benefits under Clause 18 of the resolution then by same analogy and reasoning it has to be held out that it is applicable to all those, who have completed more than 10 years qualifying service on or after 31.03.1980, precisely for the following reasons: Firstly; for the reason that writ petitioners retired in November, 2003 (30.11.2003) i.e. more 23 years after 31.03.1980. Secondly; The

conjoint reading of the resolution of the Finance Department dated 31.07.1980 and Rule 109 of the Bihar Pension Rules, any prudent man can arrive at only irresistible conclusion that the issue with regard to grant of pension of transferred employees from pensionable service to non-pensionable service like the instant case is deemed to be pending and as such the scheme of resolution of the Finance Department dated 31.07.1980 with regard to reduced qualifying pensionable service of 10 years is applicable even in the case of the writ petitioners. It is clarifieid here that this Court in the present appeal is only examining the issue of qualifying pensionable service for grant of pro-rata pension on the undisputed premise of fact that writ petitioners have worked as State Government employees before their transfer. The larger issue whether they continued to be State Government employee even after transfer and entitled to counting of entire service for grant of pension is the subject matter of reference in C.W.J.C. No. 6550 of 2000 and analogous cases and as such this Court will examine the same issue separately and decide accordingly.

10. It is to be noted here that the Welfare State introduced pension scheme as social security measure and time and again considering the hardship of the employees and its dependant modified the pension scheme and liberalize the pension rules and

pension scheme as a part of its commitment to provide social security under the scheme of Part III as well as Part IV of the Constitution of India.

11. The role of the Constitutional Court is to wheel a head the Constitutional philosophy and ethos and to interpret the beneficent scheme and its objectives consistent with the Constitutional philosophy of equality and justice.

12. This Court is conscious of the dawn of human right jurisprudence, the Universal declaration of the Human Rights and the cherist objectives set out in Part IV of the Constitution and the articulation of the Apex Court in the matter of grant of pension. Human right element in the matter of grant of pension is now well settled and well founded. While construing the scheme of resolution of the Finance Department dated 31.07.1980, the Court is also required to look at the liberalize scheme of reducing the qualifying pensionable service as well as the object of parity and equality for making the qualifying period, similar for the temporary employees like permanent employee.

13. Thus in the totality of the facts situation, I am of the considered view that the objective of the resolution of the Finance Department dated 31.07.1980 is to liberalize the scheme to extend the benefit of pension to those who have completed 10 years,

irrespective whether they are permanent government servant or temporary government servant. The benefit of such liberalize qualifying period of pensionable service has to be construed in a liberal manner to promote, the objective behind amendment of the qualifying period of service and not to adopt pedantic approach to defeat the claim of the employees like the writ petitioners, who are otherwise eligible for the benefit, but for the narrow construction of cut off date i.e. 31.03.1980 the claim of petitioners for grant of pension is to be defeated. The Apex Court judgment in D. S. Nakara case (supra), is settler on the point of fixation of cut off date. Although I am of the considered view that the cases of the petitioners are covered by the scheme even under Clause 20 of resolution dated 31.07.1980, as their cases were pending in terms of Rule 109 of the Bihar Pension Rules, as they retired on 30.11.2003, much after the resolution of the Finance Department dated 31.07.1980 and then the matter for grant of pension is deemed to be pending in terms of Clause 20 of the resolution of the Finance Department dated 31.07.1980 read with Rule 109, even otherwise I cannot up hold the fixing of cut off date 31.03.1980 vide Resolution dated 31.07.1980 as cut off date for considering the case of pensionable service for grant of pro-rata pension to the writ petitioners, as from the perusal of the resolution of Finance

Department dated 31.07.1980 one cannot decipher any rational justification for fixing cut off date as 31.03.1980 and as such it is arbitrary and imaginary and as such cannot be applicable to deny pro-rata pension to the writ petitioners.

14. There is one additional reason for rejecting the submission of Mr. Verma in this case, in fact in this case, I have the advantage of going through the record of other connected cases, which indicates that similarly circumstanced other employees were granted the benefit of pro-rata pension by the State of Bihar without insisting on the cut off date on 31.03.1980. Reference in this connection is made to the case of Jagdish Prasad of C.W.J.C. No. 11919 of 2007, who has been granted the benefit of pro-rata pension for rendering the service before transfer to the BIADA i.e. the period 26.11.1966 to 15.06.1978 was taken for consideration and he was granted the pro-rata pension and gratuity for the period of 11 years and six months vide letter dated 19.09.2006. In C.W.J.C. No. 6564 of 2003, the petitioner Daya Shankar Pandey was granted pro-rata pension for rendering his service for the period 01.12.1964 to 02.02.1976 vide Memo No. 192 dated 25.01.2003 and petitioner Shiv Kant Jha, petitioner of C.W.J.C. No. 6465 of 2003 was granted pro-rata pension for the period 24.11.1964 to 02.02.1976 (11 years 2 months and 8 days) vide Memo No. 2489 dated 17.10.2002. Thus,

the aforesaid materials on record is indicative of the fact that the officers of the State Government consciously applied the circular of the Finance Department dated 31.07.1980 in the matter of all such similarly circumstanced employees, but they adopted different yardstick to deny the pro-rata pension to similarly circumstanced only these two writ petitioners, namely, Ganesh Choudhary of C.W.J.C. No. 12057 of 2013 and Loknath Singh @ Lok Nath Prasad Singh of C.W.J.C. No. 5326 of 2008 and even after indulgence of the writ Court for grant of pro-rata pension, they have preferred these two appeals, which shows the mind set of the officers of the State of Bihar. Unfortunately, they have ignored even the Bihar State Litigation Policy, 2011, which was drawn on the line of the National Litigation Policy and in the light of the recommendation of the 13th Finance Commission.

15. Bihar State Litigation Policy, 2011 was published in the official Gazette in March 2011 it contains laudable objects and contains the commitment of the State Government that the litigation will not be resorted for the sake of litigation. The object under Clause 1.3 is to reduce the pressure on the overloaded judiciary and to expedite dispensation of justice. The present case is stark example of the difference in tall claim in the litigation policy and the ground reality. In the litigation policy, it has been

highlighted in 4.C that the Government Department will consider and settle the claim of the representationist/applicant employee, if the claim is found covered by any decision of the Court. Many service matters of this nature can be disposed of at the level of the Department itself without compelling the litigant to come to the Court.

16. To the contrary, the present case where the authorities of the department consciously decided to grant the benefit of pro-rata pension to similarly circumstanced many employees including the few referred above, but have preferred these Letters Patent Appeal, which shows either they are totally ignorant of the Bihar Litigation Policy, 2011 or the Bihar Litigation Policy, 2011 is only glorifying books which contains the Bihar Litigation Policy. This Court takes serious note of the manner in which the aforesaid two appeals have been filed and as such deprecate the decision of filing the present two appeals firstly; for the reason that the issue raised in these appeals has attained finality in other cases as no appeal was preferred. Secondly; these appeals are in teeth of litigation policy 2011. I am unable to digest the rational behind filing of these appeals. Particularly, in the fact situation where identical circumstanced others have been granted the benefit of pro-rata pension.

17. Statistics available indicate that the constitutional courts are burdened with uncalled for litigation and the greatest litigant in the Constitutional courts are State and its instrumentality. In fact they are major player in the litigation exposion. Although they professes a litigation policy to reduce the burden of the Court by directing its policy not to litigate for litigations sake and adopt similar yardstick for similar cases, but the manner in which uncalled for litigations are taken to the law courts it rendered the litigation policy i.e. Bihar Litigation Policy a hoax. Thus in the totality of the fact situation and considering the fact that the issue raised in these two appears lack any substance, the issue raised in these appeals attained finality in other cases, there is absolutely no merit in these two appeals coupled with the fact that these appeals are in complete disregard to Bihar Litigation Policy, I am constrained to hold that the two appeals are totally ill advised and wastage of court's time, the same are accordingly dismissed.

18. Adverting to the larger issue raised vide order under reference dated 23.11.2012, it would be appropriate to refer to a few foundational facts in order to appreciate the issue involved in the present batch of cases. In C.W. J.C. No. 6550 of 2000, seven petitioners have approached the writ Court for quashing of the Memo No. 1897 dated 22.05.2000 issued by the Special Secretary

to the State Government in the Industry Department, whereby the claim with regard to current and arrears of deputation allowance in terms of Bihar Service Code was rejected. In the writ application, the petitioners have placed on record various notification and orders with regard to their transfer from Industry Department to different Industrial Area Development Authority and they have pleaded with reference to the foundational fact of individual petitioner that they were initially appointed on the vacant sanctioned post by the State Government and after serving for more than 10 years, they have been transferred from regular government service to the newly created various Industrial Area Development Authority. Except petitioner no.7, who was appointed in 1968 by the Director, Rehabilitation Department of Industries and Technical Education, Government of Bihar in the office of Director of Rehabilitation, Barouni Refinery Project, Hathidah, Patna and he was sent on deputation to Patna Industrial Area Development Authority, Patna vide Government Memo No. 82 dated 31.01.1974 and thereafter he was transferred to the office of NBIADA, Mzaffarpur and in all other cases, the petitioners were transferred after severing for 11/12 years in the Industry Department.

19. From perusal of Annexure-2 Series (Memo No. 23024 dated 29.11.1978, Memo No. 14290 dated 18.10.1985, Letter

nos. 705 and 706 dated 09.03.1979, it is manifest that the services of petitioner nos. 1, 2, 3 and 4 have been confirmed in the Industry Department and they have been made permanent w.e.f. 01.04.1975 vide letter no. 706 dated 09.03.1979. In the said letter, it was made clear that petitioner nos. 1, 2, 3 and 4 have been made permanent w.e.f. 01.04.1975 and they have been sent for deputation w.e.f. 02.02.1976. In the letter no. 706 dated 09.03.1979 in addition to the petitioner nos. 1 to 4, the name of one Munan Prasad finds mentioned. From the perusal of the aforesaid letter it is evidently clear that the respondent, the Department of Industry, confirmed the services of the petitioners and they have made permanent w.e.f. 01.04.1975 i.e. w.e.f. the date anterior to their transfer in the Industrial Area Development Authority. It appears that after several years of their confirmation and extending the status of permanent employee in the Industry Department and after issuance of Departmental letter no.6005 dated 16.07.1993 whereby the authorities of the Industry Department took conscious decision of confirmation of the services of the petitioners and alike. On 05.11.1993, letter no. 10708 was issued by the Additional Secretary in the Industry Department to various Managing Directors of different Corporations and authorities under the Industry Department as well as the petitioners and others, who were confirmed in the Industry Department and made permanent w.e.f. 01.04.1974/01.04.1975 to the effect that they have been confirmed in the Government Service on the original post and in course of time your services have been handed over to different Corporations/Authorities, which is non-Government Organization, therefore, the petitioners and others were asked to submit their comment as to why not their services be permanently transferred to the Corporation/Authority from the date of their joining in the Board and Corporation and the departmental order no.6005 dated 16.07.1993 be not cancelled. For ready reference Memo No.10708 dated 05.11.1993 is quoted herein below:-

बिहार सरकार
उदयोग विभाग
ज्ञाप सं0 –10708 पटना, दिनांक 05.11.1993 1993 ई0

सेवा में,
श्री शम्भु किशोर झा
सहायक
मुख्यालय, मुज0

विषय : उदयोग विभाग के अन्तर्गत विभिन्न कार्यालयों में कार्यरत सरकारी सेवकों का निगमों/प्राधिकारों में हस्तान्तरण के फलस्वरूप उनकी सरकारी सेवा समाप्त कर सबंधित निगम/प्राधिकार में स्थायी रूप से सेवाओं का हस्तांतरण।

उदयोग विभाग के अन्तर्गत विभिन्न योजनाओं/कार्यालयों में आपकी नियुक्ति अस्थायी रूप से की गयी थी और आपके द्वारा धारित पद पर आपकों मौलिक नियुक्ति करते हुये आपका सरकारी सेवा में सम्पुष्ट भी किया गया थां। कालान्तर में आपको सेवा में विभिन्न निगम/प्राधिकार में हस्तान्तरित/सौंपी गयी जहॉ आपने योगदान दिया जो एक गैर सरकारी संस्थान है। अतः संबंधित गैर सरकारी संस्थान में योगदान देने तथा लम्बी अवधि तक उक्त गैर सरकारी

संस्थान के सेवक बने रहने के कारण अब आप संबंधित गैर सरकारी संस्थान के सेवक हो चुके हैं जहॉ सी0पी0एफ0 की सेवा उपलब्ध हैं।

अतः इस पत्र की प्राप्ति के एक माह के अन्दर आप अपना मन्तव्य दें कि क्यों नही आपको संबंधित निगम/प्राधिकार में योगदान देने की तिथि से ही सरकारी सेवा से हटाकर निगम/प्राधिकार में आपकी सेंवायें स्थायी रूप से हस्तांतरित कर दी जाय तथा विभागीय आदेश सं0 6005 दिनांक 16.7.93 को निरस्त किया जाय।

आप अपना मन्तव्य अपन निगम/प्राधिकार के प्रबंध निदेशक के माध्यम से निर्धारित समय के अन्तर्गत भेजें।

सरकार के अपर सचिव

दास

3/11/93

20. After the letter of the Additional Secretary, Industry Department dated 05.11.1993, the petitioners and others have expressed their willingness to continue in the Government service and in their response they have categorically stated that they want to be repatriated to the Government. The letter no. 655 dated 03.05.1994 contains the brief statement of the response of the petitioners and others indicating their clear intention to be repatriated with the Government Department. The Managing Director of the North Industrial Area Development Authority vide Memo No. 1484 dated 21.11.1994 wrote to the Director Industry communicating the decision of the Board of the Directors of the authority in its 42nd meeting dated 03.10.1994 whereby the Board of Directors decided to return the services of those employees, who have expressed their willingness to return back their service to the

State of Bihar. The correspondence thereafter available on the record of the writ petition (C.W.J.C. No. 6550 of 2000) indicate that the authorities and the department kept on writing letters seeking one or the other clarifications in the matter of repatriation of these employees to the Government Department and during the intervening period some of the employees on attaining the age of superannuation, retired and on their retirement, they have been granted pension on the intervention of the writ Court. Reference in this regard made to the case of Shiv Nandan Paswan (petitioner no.3) who was granted pensionary benefits under the order of the writ Court in C.W.J.C. No. 6081 of 1999.

21. The petitioners in C.W.J.C. No. 6550 of 2000 and others have earlier filed C.W.J.C. No. 5057 of 1998 for a direction to the respondents to provide them current and arrears of deputation allowance with interest for delayed payment. The writ application was disposed of vide judgment and order dated 30.09.1999 by the writ Court on consideration of various letters and notification on record. The writ Court in para 6 noted that some of the petitioners' services have been confirmed in the services of the State and they are permanent employees of the State and as such they express their willingness to return back to the parent department and the NBIADA, Muzaffarpur have decided to return

back the services. The writ Court also noted the various correspondences including letter no. 10708 dated 05.11.1993 and the letter of NBIADA and then noted that prima facie it appears that the petitioners have their lien under the State. However, in absence of specific averment and document, no such specific finding was given by the Writ Court and the Writ Court remitted back the matter to the Secretary, Industries Department for decision in respect of the petitioners. After the judgment/order of the writ Court dated 30.09.1999, the petitioners represented the Secretary, Industries Department and the Commissioner-cum-Secretary, Industries Department passed order, which was communicated vide Memo No. 1897 dated 25.05.2000 whereby the Commissioner-cum-Secretary, Industries Department admitted the fact that the services of the employees after their transfer to the BIADA were confirmed by the State Government, however, referring to the letter no. 12807 dated 15.06.1978, the Commissioner-cum-Secretary, Industries Department proceeded that on the date of their transfer they were temporary and their services were confirmed with retrospective effect and they have been made permanent subsequent to their transfer, but from retrospective date. Since these employees were transferred along with the post and as such they do not hold lien and their transfer cannot be treated as deputation and consequently they are not entitled to deputation allowance.

22. Aggrieved by the decision of the Commissioner-cum-Secretary, Industry Department, the present writ petition was filed. The writ application was placed for hearing before the learned Single Judge, who on consideration of the stand of the respondent State referred this case to the Division Bench vide order dated 23.11.2012. The writ Court though noted the judgment in C.W.J.C. No. 4761 of 2006 (Gangadhar Jha -Versus- State of Bihar and others dated 22.02.2010) and L.P.A. No. 1174 of 2010, arising of the said writ order, which was dismissed vide order dated 10.05.2012 refer the matter for consideration by the Division Bench. The writ court noted that the distinction of transfer of the Project/Scheme lock stock and barrel with all assets and liabilities, as is evident from Annexure-1 Series of the first writ application, was not brought to the notice of the Court on earlier occasions and therefore the matter was referred to the Division Bench for reconsideration and authoritative decision in this regard on the facts, as noted above.

23. The learned Single Judge while referring the matter to the Division Bench has opined that Annexure-1 was not noticed by other Bench while deciding the writ application and accordingly he referred C.W.J.C. No. 6550 of 2000, C.W.J.C. No.

6465 of 2003 and C.W.J.C. No. 6564 of 2003 for reconsideration and authoritative adjudication by the Division Bench. In fact on scrutiny of the decision in the connected case, it transpire that this issue was earlier raised by the respondent State in C.W.J.C. No. 4761 of 2006 and in L.P.A. No. 1174 of 2010 and the writ Courtr as well as the Division Bench after considering the totality of the case and relying upon the judgment in State of Bihar & Ors Vs. Kamal Bansh Narayan Singh & others L.P.A. No. 154 of 2004 dated 12.02.2004, which was affirmed in Civil Appeal No. 1684 of 2005 vide order dated 02.08.2007 dismissed the L.P.A. and rejected the aforesaid submission. It appears from the record that following the reference order dated 23.11.2012, C.W.J.C. No. 11919 of 2007 and C.W.J.C. No. 12057 of 2013 were also referred to the Division Bench, hence all the writ application have been placed together for adjudication as all the writ applications involve the identical question of facts and law.

24. From the record, it transpires that petitioner no.3 of C.W.J.C. No. 6550 of 2000 has earlier filed C.W.J.C. No. 6081 of 1999 and the writ application was disposed of with a direction to the Director, Industry to take final decision with regard to payment of post retrial dues on similar reasoning of C.W.J.C. No. 14368 of 2001, which was disposed of on 13.02.2008. It appears that

C.W.J.C. No. 5092 of 1991 was filed on Munan Prasad, who was confirmed along with the petitioner nos. 1 to 4 of C.W.J.C. No. 6550 of 2000 w.e.f. 01.04.1974. He approached the writ court for quashing the order dated 04.04.1991, whereby the Joint Secretary, Department of Industries, Government of Bihar has cancelled all the previous orders of confirmation of petitioner Manan Prasad w.e.f. 01.04.1974. The Division Bench noted that the writ petitioner continued to be the employee of the State Government and as such held out that respondent no. 2 has no jurisdiction to cancel the previous order of the Government whereby the petitioner was confirmed against the post in question and accordingly directed to the authorities to issue sanction order for payment of retirement benefit of the petitioner vide order dated 20.04.1993, passed in C.W.J.C. No. 5092 of 1991 on the same line of reasoning Petitioner No.3 was granted full pension.

25. From the judgment of the Apex Court in Civil Appeal No. 1684 of 2005 with Civil Appeal No. 2594 of 2005, it is seen that the Apex Court has considered the identical facts situation in the case of Ramanand Prasad, who was transferred on deputation from the Department of Industry vide notification dated 13.08.1975 to the Handloom and Handicrafts Corporation from where he superannuated on 31.07.1996. Under the notification dated

13.08.1975, there was provision for termination of service by giving one month's notice. Ramanand Prasad was confirmed in the Department on 13.01.1999 and after the superannuation on 31.07.1996 he was denied pension. The writ Court as well as L.P.A. Court held out that in terms of the order dated 13.08.1975, the services of petitioner Ramanand Prasad from State Government is deemed to be terminated, but the Apex Court noticing the order dated 13.01.1999 whereby the services of the appellant was confirmed held out that the appellant is entitled to pension and other benefits as superannuated Government servant. The Apex Court even rejected the reasoning of the Single Judge and Division Bench that the order of confirmation dated 13.01.1999 is presumed to be passed erroneously. The Apex Court judgment in Civil Appeal No. 1684 of 2005 in similar facts situation is settler on two points. Firstly; the order of confirmation and making the employee permanent precludes the respondent from making any submission of assumption and presumption or inference of termination on transfer of service to Foreign Department. Secondly; the Apex Court noticing the letter of confirmation of the appellant held out that the appellant is entitled to similar treatment as superannuated Government employee despite transferred to Foreign Department.

26. Adverting to the facts of the present batch of

cases, the learned Single Judge, placed reliance on the order contained in Annexure-1 to the writ application to indicate that the transfer of the petitioner was not transfer from the service of the Industry Department, but the entire project with lock stock and barrel was transferred and as such the petitioner ceases to be the employee of the State Government. Annexure-1 for ready reference is quoted below:

एनेक्चर –1

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बिहार सरकार

उधोग एवं प्रावधिक शिक्षा विभाग उद्योग

पत्र सं0...........पटना, दिनांक– दिसम्बर 73

श्री राधा सिंह
सरकार के उप सचिव।

सेंवा में,

प्रबंध निदेशक,
आदयोगिक क्षेत्र विकास प्राधिकार,
पटना।

विषय :– निदेशक पुर्नवास बरौनी औदयोगिक क्षेत्र योजना तथा पटना आदयोगिक क्षेत्र योजना को उनके अंतर्गत नियुक्त सरकारी कर्मचारियों सहित पटना औद्योगिक क्षेत्र विकास प्राधिकार में हस्तानन्तरण।

महाशय,

उपर्युक्त विषयक इस कार्यालय के राज्यादेश सं0 17672 दि0 2.11.73 को अवक्रमित करते हुए निदेशानुसार कहना है कि निदेशक पुर्नवास बरौनी औधोगिक क्षेत्र योजना तथा पटना औधोगिक क्षेत्र योजना फरवरी 1974 तक स्वीकृत है। राज्य सरकार ने औधोगिक क्षेत्र विकास प्राधिकार पटना के गठन के फलस्वरूप प्राधिकार के कार्यों में सहयोग देने हेतु निदेशक

पुर्नवास बरौनी औधोगिक क्षेत्र योजना जिसकी सूची संलग्न है। को इसके अंतर्गत नियुक्त सरकारी कमचारीयों सहित प्राधिकार के अधीन दि0– 1.3.1974 से निम्नांकित शर्तों के आधार पर हस्तांतरित करने का निर्णय लिया है।

1. अस्थायी कर्मचारी– संलग्न सूची में अंकित पदो ंके विरूद्व नियुक्त सभी अस्थाई कमचारियों की सेवा में प्राधिकार में हस्तानांतरित की जाती है, ये सभी कर्मचारी वेतन वृद्वि और छुट्‌टी की मामलों में प्राधिकार के अंतर्गत भी उतना ही हकदार होगें, जितना सरकारी कर्मचारी के रूप में थे। वे दि0 1.3.74 से प्राधिकार के कर्मचारी समझे जायेंगें। सरकारी सेवा से प्राधिकार में सेवा हस्तानांतरण के फलस्वरूप उनकी सेवा में टूट नही समझी जायेगी।

2. स्थायी कर्मचारी :– उक्त योजना में नियुक्त स्थायी सरकारी कर्मचारीयों की सेवाऐं दि0 – 1.3.74 स प्राधिकार के अधीन बाहय सेवा शर्तों के अंतर्गत हस्तातरित किया जाता है । बाहय सेवा शर्तों का आदेश वाद में निर्गत किया जायेगा।

3. अनुरोध है कि इस राज्यादेश की एक–एक प्रति उपरोक्त योजना में नियुक्त कर्मचारियों के बीच वितरित कर दें।

दि0 – 1.3.74 से संलग्न सूची में अंकित पदो ंके पदधारक अपना वेतन प्राधिकार से पायेगें।

ह0– राधा सिंह
सरकार के उप सचिव

ज्ञापांक – पटना, दिनांक – दि0 73,

प्रतिलिपि – महालेखाकार, बिहार रांची को संलग्न सूची के साथ सूचनार्थ तथा आ0 कार्रवाई हेतु, प्रेषित।

ह0– राधा सिंह
सरकार के उप सचिव

ज्ञापांक –82 पटना दिनांक – 3.1.74
प्रतिलिपि – 1. वित्त विभाग दा प्रतियों में। 2.

पुनर्वास निदेशक, बरौनी औ0 प्रक्षेत्र, बरौनी जिला बेगूसराय श्री ए0बो0सी0 श्रीवास्तव को सूचनार्थ प्रेषित।

27. The learned Single Judge has totally ignored the subsequent event of confirmation of the service of the petitioners and the decision grating them status as permanent staff w.e.f. 10.04.1975 or other dates, which is anterior to the date of their transfer to BIADA and other authorities and referred the case for adjudication by Division Bench.

28. Memo No. 82 dated 31.07.1974 contains two different schemes regarding status on transfer of project one with regard to temporary employee and the other with regard to permanent employee. The permanent employees were transferred on deputation with assurance of grant of deputation allowance. Thus the order under reference is loapsided it only focused on transfer of project lock stock and barrel, but ignores the scheme of deputation of permanent employee. The order of confirmation and giving permanency to the writ petitioner nos. 1 to 4 is clinching on the point that for all practical purposes these petitioners were the State Government permanent employee from the date, prior to the actual date of their transfer. The communication of the Deputy Secretary of the Industry and Technology Department with the Managing Director of the Industrial Area Development Authority cannot

eclipse and alter the status of these petitioners, who become permanent government servant on their confirmation. The subsequent correspondence and the office order no. no.6005 dated 16.07.1993 again reiterate the Government decision treating these petitioners as the State Government employees. The show-cause notice dated 05.11.1993 and its reply and the decision of the Board of Directors to repatriate the services of the petitioners to the parent department are unimpeachable document on record to establish that the petitioners continued to be the State Government Employee. Undisputably, the respondents have never recalled or cancelled the decision of confirmation of the services of the petitioners or giving permanent status as State Government employee. Even the department order no. no.6005 dated 16.07.1993 is still intact and has not been recalled as yet.

29. Adverting to the other writ application referred to the Division Bench in the light of the reference order dated 23.11.2012, it is seen that C.W.J.C. No. 6465 of 2003 was filed by the writ petitioner Shiv Kant Jha to fix and pay the retiral dues including family pension and gratuity on the basis of salary drawn at the time of retirement on 31.01.2001 and for payment of remaining part of the G.P.F., leave encashment and differential amount of salary on account of recommendation of 6th Pay Revision

Commission. C.W.J.C. No. 6564 of 2003 was filed by the petitioner Daya Shankar Pandey for a direction to grant revised pension and gratuity on the basis of salary drawn by the petitioner on the date of retirement on 30.11.2000 and for payment of remaining part of G.P.F., leave encashment on the basis of revised pay scale under 6th Pay Revision Commission. C.W.J.C. No. 12057 of 2013 was filed by the petitioner Ganesh Choudhary for a direction to the respondents to fix and pay pension on the basis of up to date pay scale for which the petitioner may be found entitled to. C.W.J.C. No. 11919 of 2007 was filed by petitioner Jagdish Prasad for direction to the respondents to grant all pensionary benefits counting the entire service rendered by the petitioner in the State Government as well as Foreign service, since this Court on consideration of the entire facts and circumstances held out that the writ petitioner is entitled to all the benefits as superannuated employee of the State Government. The respondents are required to work out the claim of the petitioners as superannuated Government employee and accordingly fix their pensionary benefit treating them as superannuated State Government employee and make the payment of balance after deducting the pensionary amount already paid to these petitioners. So far as claim for grant of benefit of 6th Pay Revision Commission is concerned, the respondents are also directed to consider the same and take final decision with regard to these employees at the earliest preferably within a period of four months from the date of filing of such representation by the petitioners or the substituted heirs.

30. In fact in many cases the respondents have granted full pension to the retired employee counting their service rendered in the State Government as well as transferred department, authority, Board or Corporation, but contrary to their litigation policy raised issue of grant of pension without counting their service in the Board/Corporation and authority.

31. The materials on record indicate that several similarly circumstanced like the writ petitioners including Munan Prasad, Kamal Bansh Narayan Singh, Jagdish Jha, Shiv Nandan Paswan (Petitioner no.3 in C.W.J.C. No. 6550 of 2000), Chhote Lal Singh, Yugal Kishore Prasad, Bhola Jha, Raghunandan Thakur, Shambhu Krishna Jha, Parmanand Prasad, Shiv Kant Jha (petitioner no.1 in C.W.J.C. No. 6550 of 2000), Hemchandra Jha and Chaturbhuj Prasad were granted pension counting entire service rendered by them in the State Government and the Board/Corporation and authority. Respondents raised this issue of non-entitlement of Pension counting entire length of service rendered by them in the parent department as well as transferred

organization only when they claimed payment of officiating allowance for rendering service in foreign department.

32. Since the writ Court in other cases decided and directed payment of pension counting the entire service rendered in the State Government and the Board/Corporation/Authority only and as such on the ground of parity and consistency the court is only considering the issue of grant of pension and decline to enter into the claim of grant of deputation allowance on transfer of service at this stage. The claim with regard to payment of officiating allowance is, accordingly, dismissed.

33. Before parting with this case, it is noted here that most of the original petitioners have died and the legal heirs have been substituted and as such the respondents are directed to finalise the issue of grant of pensionary benefit/family pension at the earliest preferably within a period of four months. In the event any petitioner(s) has/have received the CPF or other benefits which is admissible as employee of transferred department, they may return the entire amount within the aforesaid period of 4 months and claim payment of post retrial dues as superannuated government employees and the respondent State will sympathetically consider their case within a further period of two months of making such request and finalize and grant consequential monetary benefit.

34. Thus in view of the judgment of the Apex Court in Civil Appeal No. 1684 of 2005 as well as the reasons including parity with other similar employees, discussed above, writ petitioners, who were confirmed by the State Government as its employee w.e.f. 01.04.1975 or vide different orders are deemed to be superannuated State Government employee and shall be entitled to all the benefits as superannuated employees of the State Government. The reference dated 23.11.2012 is answered accordingly. All the writ applications, as referred to, are hereby allowed to the extent indicated above. All the original petitioners or the substituted heirs are accordingly entitled to the consequential benefits.

(Anil Kumar Upadhyay, J)

Rajendra Menon, CJ: I agree

(Rajendra Menon, CJ)

Uday/-

AFR/NAFR	NAFR
CAV DATE	17.08.2017
Uploading Date	06.09.2017
Transmission Date	