IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1018 of 2017
IN
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. 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.
4. 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.
5. 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.
6. Shamsuddin Ahmad, son of Late Abdur Rahim, resident of Mohalla - Makhdum Rasti Nagar Colony, Police Station - Phulwarisharif, District - Patna.
7. Nandu Sah, Son of Late Bhagwan Das, resident of Mohalla - Nanmuhia More, Police Station - Sultanganj, District - Patna.
8. Indra Narayan Das, son of Late Mathura Lal Das, resident of Mohalla - Sri Krishna Nagar, Road No. 8, Police Station - Budha Colony, District - Patna.
9. Dr. Prabhash Prasad Sinha, son of Late Akhileshwari Prasad Sinha, resident of Mohalla - Indrapuri, Road No. 2, Police Station - Patliputra, District - Patna.
10. Dr. Suresh Prasad, son of Late Yadunandan Prasad, resident of 101, Annapurna Apartment, Punai Chak, Police Station - Shastri Nagar, District - Patna.
11. Kameshwar Thakur, son of Late Doman Thakur, resident of Village - Chaurrah, Police Station - Khusrupur, District - Patna.
12. Ramesh Pandit, son of Late Ram Devan Pandit, resident of Babu Tola, Bankipur, Police Station - Pirbahore, District - Patna.
13. Ganni Ram, son of Late Lakhan Ram, residing at Mohalla - Rajapur, Gali No. 28, Police Station - Buddha Colony, District - Patna.
14. Dhan Kumar, son of Late Ram Kumar Bahadur Singh, residing at Mohalla Mandiri, Police Station - Buddha Colony, District - Patna.
15. Indra Prasad, son of Late Ram Chandra Prasad, residing at Mohalla - Bazar Samiti, Chai Tola, Mussalahpur, Police Station - Bazar Samiti, District - Patna.
16. Dr. Syed Fazlerab, son of Late S.M. Ismail, residing at Quarter No. 2, Sinha Library Campus, Sinha Library Road, Police Station - Kotwali, District - Patna.
17. Chitranjan Sinha, son of Late Achyutanand Sinha, resident of Mohalla - New Bahadurpur, Near Shyam Mandir, Road No. 13B, Police Station - Bahadurpur, District - Patna.
18. Asharfi Jha, son of Late Dashrath Jha, resident of Village - Balha, Police Station Rajnagar, District Madhubani.

.... Appellant/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.

……Respondents/Respondents (1st Set)

7. Dr. Krishna Kumar Verma, son of Late Omkar Prasad Verma, resident of 25, Shradha Nand Road, Police Station - Kotwali, District - Ranchi (Jharkhand).

8. 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.

9. Bindeshwar Prasad, son of Late Ram Nath Singh, resident of Rampur Road, near Bazar Samiti Gate, Police Station - Bazar Samiti, District - Patna.

10. M.J. Philip, son of Late M.P. John, resident of My Nest, Tagore Road, Near Radio Park, Tai Kanna Puram, Police Station - Pooja Pura, District - Trivandrum.

11. Mostt. Usha Devi, wife of Late Chandra Bhushan Singh, resident of Village Shekhpur, Police Station - Warisnagar, District - Samastipur.

12. 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.

13. Mostt. Sita Devi, wife of Late Suresh Ram, resides at Mohalla Buddha Colony, House of Ashok Kumar, Police Station - Buddha Colony, District - Patna.

14. Paras Nath, son of Late Jagdev Prasad, resident of Mohalla - Mahatma Gandhi Nagar, Kankarbagh, Police Station Agamkuan, District Patna.

15. 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.

.... Respondent/s

==

Appearance :

For the Appellant/s : Mr. Vinod Kanth, Sr.Adv.

Mr. Abhinav Srivastava, Adv.
For the Respondent/s : Mr. Ashutosh Ranjan Pandey, AAG-15
==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)
Date: 13-03-2018

Challenge in the present Letters Patent Appeal is to the judgment dated 20.06.2017 passed by the learned Writ Court in CWJC No.13715 of 2015 preferred by the present appellants. By the impugned judgment, the learned Writ Court has refused to direct the respondents to pay the arrears as well as the current pension to the 27 petitioners of Anugrah Narayan Sinha Institute of Social Studies, Patna (in short hereinafter 'the Institute') which according to the writ-petitioner-appellants have been stopped from the month of June, 2014.

2. The original writ-petitioners moved this Court for the following reliefs:-

> *"(i) For issuance of an appropriate direction, order or writ in the nature of mandamus commanding the respondents to pay the arrear as well as the current pension to these petitioners on month to month basis which have been arbitrarily stopped from June, 2014 by the respondent concerned which they were getting continuously on month to month basis and inspite of direction by the Hon'ble Chairman, Bihar State Human Rights Commission, Patna as also by various directions issued by this Hon'ble Court time to time,*

the same has not been paid to these petitioners amounting to starvation at the fag end of their life.

(ii) For holding and declaring that the arbitrary action of the respondent concerned stopping the monthly pension to these petitioners is prompted with malice and mala fide intention which is contrary to and under the teeth of Article-19(1)(f), 21&31(1) of the Constitution of India.

(iii) For any other relief/s as to which the petitioner may be found entitled to in the facts and circumstances of the case."

3. As is apparent from the pleadings exchanged by the parties, the petitioners are retired employees of the Institute. The petitioner nos.1 to 5 claim that they are the retired teaching employees whereas petitioner nos.6 to 27 are the Class-III and Class-IV retired employees of the Institute who have rendered their full service in the Institute and superannuated from service on attaining their respective age of superannuation.

4. Petitioners claim that the respondent-Institute is a State under Article 12 of the Constitution of India having perpetual succession and a common seal. The Institute is a creature of Statute namely The Anugraha Narayan Sinha Institute of Social Studies Act 1964 (hereinafter referred to as 'the Act of 1964'). According to sub-section (2) of Section 3 the Institute shall have perpetual succession

and a common seal and shall by the said name sue and sued. Section 4 provides the purposes and powers of the Institute. Section 5 lays down the constitution of the Board of Control. In terms of Section 5, the Chairman of the Board of Control is to be nominated by the State Government, the Vice-Chancellor of the Patna University established under the Patna University Act, 1961 is Ex-officio Member; one Vice-Chancellor from amongst the Universities other than Patna of the State of Bihar, to be nominated by the State Government in rotation in alphabetical order as per names of universities; two representatives of the Indian Council of Social Sciences Research, New Delhi to be nominated by the Chairman of the Council; one representative of the University Grants Commission to be nominated by the Chairman of the Commission; Director of the Institute-ex-officio-Member Secretary; two persons of eminence nominated by the State Government in consultation with the Chairman; one faculty representative not below the rank of Professor to be nominated by the State Government in rotation from amongst the Professor in alphabetical order of their names; Secretary to the State Government in the Department of Education-ex-officio and the Secretary to the State Government in the Department of Finance-ex-officio are the members of the Board of Control (in short 'BOC' or the 'Board'). This Court has purposely noted the constitution of the Board of

Control in order to show hereinafter that the State Government exercised pervasive control over the Board of Control of the Institute by virtue of its various nominees particularly the officers of the Secretary level of the Department of Education and Department of Finance being ex-officio members present in the Board of Control.

5. Since we are concerned with the payment of pensionary benefits to the writ petitioners-appellants, it would be apt to quote certain relevant provisions from the Act, 1964 hereinbelow:-

> *"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.*
> *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 in 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.
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.

11. ***Annual Report***

The Board shall prepare once every year an annual report giving a true and full account of the activities of the Institute during the year next preceding and forward copies thereof to the State Government and the State Government shall cause the same to be laid before the Legislature of the State.

12. ***Accounts and Audit****:*

(1) Subject to any rules made by the State Government in this behalf, the accounts of receipts and expenditure of the Institute shall be kept in such manner and in such form as the Board may from time to time prescribe.

(2) The Board shall, as soon as may be after closing its annual accounts, prepare an annual statement of accounts in such form as the State Government may from time to time prescribe and forward the same to the Accountant General, Bihar, by such date as the State Government may, in consultation with the Accountant-General, Bihar, determine.

(3) The accounts of the Institute shall be audited by the Accountant General, Bihar, or some other officer appointed by him in this behalf and the Board shall take suitable action on the matters arising out of the audit report.

(3A) The State Government may call upon the Institute to adopt concurrent audit by the Chief Controller of Accounts and Audit of the State Government.

(4) The Board shall forward the annual accounts of the Institute together with the audit report thereon to the State Government and the State Government shall cause the same to be laid before the Legislature of the State".

6. Section 17 of the Act, 1964 confers power upon the Board to make regulations consistent with the Act and Rules made thereunder. Section 17 is quoted hereunder for a ready reference:-

"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."

7. By virtue of the powers conferred upon the Board to frame Regulations, the Board has come out with Regulations known as A. N. Sinha Institute of Social Studies Patna Regulation, 1966. Regulation 13 talks of service conditions of the employees of the Institute and state as follows:-

"The employees of the Institute shall be bound by such conditions of service as may be laid down by the Board from time to time."

8. The Board has also framed Rules known as 'Rules of The Anugraha Narayan Sinha Institute of Social Studies, Rules 1966' whereunder Rule 3 specifically provides that the Board of

Control is the supreme governing Body of the Institute as provided under Section 6 of the Act, may delegate to any of its members or any officer of the Institute such administrative and financial powers and impose such duties as it deems proper and also prescribe limitations within which these power and duties are to be exercised or discharged.

9. It is the specific case of the writ-petitioners that under the Rules of Service Condition there was no provision made either in the Act or the Rules relating to pension benefits to the employees of the Institute. However, the Board of Control in its meeting held on 15.02.1985 adopted the triple benefit scheme with effect from 01.02.1985. A copy of the Board's Resolution dated 15.02.1985 has been brought on record by way of Annexure-1 to the writ application. In the meeting held on 15.02.1985 Shri Arun Pathak, the then Education Commissioner along with other members of the Board of Control were present. There was an agenda item no.7 'To consider the report of Committee constituted for implementing the triple retirement benefit.' The agenda and resolution passed by the Board in this regard are quoted hereunder for a ready reference:-

> *"The Board accepted the recommendation of the Committee on Retirement Benefits dated 11.2.85 and decided that the scheme as prepared may be implemented, provided that the scheme as*

reported would be operated from Institute resources and that no separate grant would be sought for it from the government. The following resolution for opening of accounts, as given in the Committee's report were passed.

1. "Resolved that retirement benefits for the employees of the A.N. Sinha Institute of Social Studies, Patna be adopted as per provision contained in the Retirement benefit statutes of Patna University subject to such conditions and changes as may be made by the Board of Control from time to time". It will take effect from 1.2.1985.

2. Resolved further that as provided in the said statutes of Patna University the following accounts be opened with a scheduled Bank in respect of this Institute; to be operated jointly by the Director and Registrar of the Institute."

10. The writ-petitioners claim that pursuant to the resolution of the Board of Control as contained in Annexure-1 to the writ application, the employees of the Institute started getting pension alike the pension admissible to employees of the Patna University. It is also their case that after their respective date of retirement, the petitioners started getting pension along with other benefits alike the government employees. It was also pointed out in the writ petition that all these petitioners or her husband retired from service between

the period 1995 to 2014. It is only at the later stage, it is alleged that the Director of the Institute started diverting the fund from one head to another without prior approval of the Government of Bihar and very often a plea was taken that there are shortage of funds for disbursement on account of pensionary benefits. It is further stated that few retired employees had approached this Hon'ble Court for their retiral benefits and many of them could be able to get their retiral dues, but at the same time many of them could not get their admissible retiral dues and many of them even died without getting their admissible dues from the Institute. There are also allegations of financial irregularities committed with regard to the funds, a copy of the audit report has been brought on record as Annexure-2 to the writ application and submission has been made in the writ application that entire irregularities when surfaced on being pointed out by the retired employees or by their Employees' Association, the Director of the Institute get furiated and as a measure of punishment he directed the office to stop the pension of the retired employees including these petitioners. Petitioners have put much emphasis on their submission that all these petitioners were getting their pension from their respective date of retirement.

11. The petitioners also approached the Bihar State Human Rights Commission and Commission took a serious view and

sought explanation from the State of Bihar as well as the Director of the Institute. It is stated that the Government of Bihar appeared before the Commission and submitted a reply stating therein that the State of Bihar as reimbursed the amount for payment of the retired employees vide Memo No.1729 dated 21.02.2013 and additional amount has also been reimbursed vide letter dated 26.02.2014 in the context of CWJC No.12426 of 2011. The petitioners claim that after intervention of the Hon'ble Chairperson of the Human Rights Commission only one month's pension were paid to them and thereafter again their pensions have been stopped compelling them to move this Court in its writ jurisdiction.

STAND OF THE INSTITUTE

12. A counter affidavit has been filed on behalf of the Institute wherein it is admitted that in its meeting held on 15.02.1985 it was decided that the triple retirement benefit scheme be implemented provided the scheme would be operated from the Institute's resources and no separate grant would be sought for from the State Government. Submission is that the Board of the Institute resolved that the retirement benefits for the employees of the Institute be adopted as per provision contained in the retirement benefit statutes of Patna University subject to conditions and changes as may be made by the Board of Control from time to time. In paragraph 9(a),

the respondent nos.4 and 5 have taken following stand:-

> *"9(a). That the Institute was paying pension to its retired employees till March 2013 from its internal resource and grants from the State Government located in budget head from 2004-05 to 2010-11. Later on the State Government dropped pension head and send a letter vide letter no.411 dated 13.3.2014 saying that pension is not approved by the Government so far and out of the State Government's grant it should not be paid and if competent authority will pay, government will recover money from his own salary. However, Institute has paid pension also to its employees for the month April and May 2014 from its internal sources."*

13. A copy of the letter dated 13.3.2014 has been brought on record as Annexure-'A' to the counter affidavit. A perusal of the Annexure-'A' would show that the Special Secretary-cum-Director (Higher Education) has raised an objection on payments being made to the employees of the Institute on account of 5^{th} and 6^{th} Pay Commission Revision, ACP, Gratuity and other post-retiral dues without getting prior sanction or permission from the State government. In the said letter, it is stated that because of such decision the government has to bear excess financial burden and has to face difficult situation in Court. Direction has been issued to obtain prior permission/sanction from the State Government in such financial matters failing which recovery shall be made from the controlling

authority out of his salary.

14. It is the stand of the respondent nos.4 and 5 that scheme which was introduced in 1985 through internal resources is not possible to continue due to increased number of pensioners and amounts of pension. It is stated that in this regard the Board of Control discussed the matter in its meeting dated 06.09.2014 and resolved that “The BOC discussed about growing financial liability on account of pension scheme which was introduced in the institute since 1985 through internal resources. Although, the Government of Bihar released earmarked grants for pension head during 2004-2005 to 2010-11, later pension head was dropped from the non plan head of state government grant, Government of Bihar in its letter dated 13.03.2014 communicated to pay statutory retiral benefits only from the Govt. Grants. Non statutory payment should be made only after concurrence of the Govt. of Bihar. Since pension has not been approved by the Govt. of Bihar so far, in view of limited internal resources and letters from the government of Bihar in reference, it is not possible to pay pension from internal resources. However, the BOC agreed in principle to continue the pension provided the Government of Bihar concurs and gives financial support for this purpose. The BOC resolved to seek grants from Government from the pension head. The BOC also discussed and resolved to explore the

possibility of creating corpus fund for pension. The BOC further resolved not to revise pension unless earmarked funds are made available on this head from the Govt. of Bihar." A copy of the minutes of the meeting held on 6.9.2014 has been brought on record as Annexure-B to the counter affidavit.

15. In the counter affidavit filed on behalf of the respondent nos.4 and 5 further averments have been made regarding the decisions which were taken in the meeting held on April 29, 2015 of the Board of Control in presence of the Chief Secretary, Government of Bihar, Principal Secretary, Education Department, Govt. of Bihar, Secretary, Department of Education, Govt. of Bihar, Secretary, Finance Department, Govt. of Bihar, Director, A.N. Sinha Institute of Social Studies, Patna and Administrator, A.N. Sinha Institute of Social Studies, Patna. A copy of the minutes of the meeting held on 29.4.2015 has also been annexed as Annexure-D to the counter affidavit.

16. In sum and substance, the stand of the Institute is that Institute is running in deficit of funds and the Board of Control of the Institute has taken a decision to request the State Government to release funds for payment of pension.

17. One thing is apparent from the pleadings of the Institute (respondent nos.4 and 5) that there is no denial of the fact

that the petitioners were getting their pension for a long time and the triple benefit scheme had come into force with effect from 01.02.1985 itself.

STAND OF RESPONDENT No.2

18. There is also a counter affidavit on behalf of the respondent no.2 sworn by Joint Secretary, Department of Finance, Government of Bihar who has simply stated that the State has been providing financial assistance to the A.N. Sinha Institute in the form of grants. These grants were basically meant for supporting the payment of salary to the staff of the institute. Never ever grants/financial assistance was given to the institute for paying pension to its employees. It is stated that every University/Institute prepares annual budget and submits to the Education Department for the release of grants. The department releases only that much financial assistance as grant which it has committed to. Releasing amount for payment of pension to the institute was never under consideration, as there is no provision under the A.N. Sinha Institute of Social Studies Act, 1964 or Regulations for providing pension to the staff of the institute. He has shifted the burden on the Institute as regards the liability on account of pension. It is admitted in paragraph 9 of his counter affidavit that the Institute in its annual budget mentioned provision for pension, however, stand of the respondent no.2 is that it

did not mention that funds for paying the pension will be provided by the State Government. It is thus his stand that the Institute has to bear its own burden from its own resources.

FINDINGS OF THE WRIT COURT

19. Learned Writ Court rejected the reliefs prayed by the petitioners on the ground that even though the petitioners claim their vested right to receive pension/family pension by virtue of the Board's resolution dated 15.02.1985, the said resolution having no statutory force cannot override the law. Learned Writ Court held that the resolution which runs contrary to the statutory Act and the rules cannot be enforced. The learned Writ Court as gone to the extent of saying that 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. According to the learned Writ Court 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.

SUBMISSIONS IN APPEAL

20. Mr. Vinod Kanth, learned senior counsel, assisted by Mr. Abhinav Shrivastava, advocate on record, submits that the finding of the Writ Court that the resolution of the Board of Control in its meeting held on 15.02.1985 to adopt triple benefit scheme cannot be said to be legal or consistent with the Act of 1964 or Rules framed thereunder has no basis and the same is liable to be set aside. Learned senior counsel submits that the Writ Court is not correct in holding that the resolution of the Board of Control has no statutory force. It is further submitted that the learned Writ Court could not appreciate that the pension scheme was in vogue for almost 30 years and the liability on account of pension was well mentioned in the budget as has been admitted by the respondent no.2 also in his affidavit, therefore, if the Institute had duly mentioned the liability on account of payment of pension and the said budget was approved by the State Government in terms of Section 10 of the Act of 1964, payments thereof from the funds received from the government cannot be said to be illegal or without sanction or permission of the government. Learned senior counsel submits that the stand of the respondent no.2 in saying that the funds were wrongly diverted for payment of pension is not fit to be accepted at this belated stage after a continue approval of the budget over 30 years by now. It is also submitted that the fallacy in the submission of respondents no. 2 writs large on the face of the

conduct of the Department all through these 30 years, the BOC has been conferred with powers to lay down the conditions of service of it's employees, the decision of the BOC laying down terms and conditions of service is not subject to approval by the Government. Such decisions are final decisions and therefore the decision by way of Resolution dated 15.02.1985 has a force of law. Learned senior counsel further submits that the terms and conditions of service of the employees of the Institute were neither required nor provided in the Act of 1964 rather such powers were vested in the BOC under Section 17(c) of the Act of 1964.

21. Mr. Piyush Lall representing the Institute submits that he has virtually no opposition to offer as regards the payment of pension to the petitioners save and except that the Institute is presently not in a well of financial condition and unless the State government grants monetary assistance as was being provided earlier the Institute is unable to meet the liability on account of pension payments from its own resources alone.

22. Learned counsel for the State has supported the impugned judgment on the grounds stated in the counter affidavits which we have taken note of hereinabove.

CONSIDERATION

23. Having considered the submissions of the rival

parties made at the bar and upon perusal of the records, we find that there is an admitted case of the Writ Petitioners-appellants that pursuant to the Board of Control resolution dated 15.02.1985 the Institute was paying pension to its retired employees and the benefits which are applicable to the employees of the Patna University have been provided to the employees of the Institute as well. This fact has nowhere been denied either by the State government or the Institute. It is also not in dispute that these petitioners were getting the pension/family pension, as the case may be, but all of sudden their payments were stopped by the Institute in the name of financial constraints. The learned Writ Court has held that the resolution dated 15.02.1985 taken by the Board of Control was contrary to the Act of 1964 and Rules made thereunder. We respectfully disagree with this finding of the learned Writ Court. It is apparent from bare reading of Section 17 of the Act 1964 that the Board of Control has been conferred with the powers to make Regulations consistent with the Act and the rules inter alia providing for terms and conditions of service of the employees appointed by the Board. Learned Writ Court has not mentioned as to how and by virtue of which provision of the Act of 1964 the Resolution of the Board taken on 15.02.1985 can be termed contrary to or in conflict with the provisions of the Act of 1964 or Rules framed thereunder. We are in agreement with the submissions of Mr. Kanth learned senior counsel that the 'BOC' having been vested with powers under Section 7 of the Act of 1964 if lays down the terms and conditions of service of the employees which includes payment of benefits as per Resolution dated 15.02.1985 the same has got a sanction of law and would be enforceable. At the same time the terms and conditions of service provided by the Board cannot be said to be contrary to any of the provisions of the Act of 1964 and Rules framed thereunder. Such decisions of BOC are not subject to approval by the Government. If it so, then the regulation framed by the Board being a peace of subordinate legislation has got force of law.

24. The Act of 1964 provides for constitution of the Board of Control and on the Board the State government has got pervasive control because all the persons are its high level officers such as Secretary to the State Government in the Department of Education and Secretary to the State Government in the Department of Finance as ex-officio members. Under Section 6 of the Act, Board of Control is the supreme governing body of the Institute and shall exercise all the powers of the Institute. The Board of Control has got also power to hold, control and administer the property and the funds of the Institute. In these circumstances, having been conferred with the powers to hold, control and administer the property and the funds

of the Institute, if the Board of Control decided to adopt triple benefit scheme in terms of the recommendation of the Committee constituted for this purpose and then made payments out of the funds available to the Institute, neither the resolution dated 15.02.1985 may be held illegal or contrary to the provisions of the Act of 1964 and rules made thereunder nor the disbursement of funds towards payment of pension/family pension may be said to be wrong or diversion of the funds.

25. Section 8 of the Act, 1964 talks of payment to its Institute. Under sub-section (1) of Section 8 the State Government shall contribute to the Institute a sum of rupees two lacs in each financial year for the maintenance of the Institute. However, sub-section (2) of Section 8 provides that 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 education work, publication, buildings and for the proper maintenance and development of the Institute. Under Section 9 of the Act of 1964 the Institute shall establish a fund which will 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 in 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."

26. Apparently the 'fund' includes all moneys received by the Institute in any other manner, therefore in terms of the liabilities provided in the Annual budget of the Institute if the State government provided funds more than the funds mentioned under sub-section (1) and (2) of Section 8 of the Act of 1964 it will constitute the 'funds' in the hand of the Institute for disbursement of the liabilities of the Institute which includes liabilities on account of pensionary benefits to it's retired employees.

27. Under sub-section (2) of Section 9 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. Sub-section (3) of Section 9 provides that 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.

28. Section 10 deals with budget and under sub-section (1) of Section 10 the Director shall, on or before the tenth day of August each year, cause to be prepared and laid by the Board, in such

manner as may be prescribed by the Board, the budget estimate of the income and expenditure of the Institute for the next financial year. Under sub-section (2) of Section 10 the Board shall 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. Under First Proviso to sub-section (3) of Section 10 the Board shall have no power to transfer any non-recurring grant for recurring expenditure and further under second Proviso 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.

29. In the entire pleadings of the respondent no.2 there is no allegation that the Institute has transferred any non-recurring grant for recurring expenditure. There is also no allegation that the Board has transferred any fund from one item to another item exceeding 20 percent of the original grant under any item. On the contrary the respondent no.2 has admitted in paragraph 9 of his counter affidavit that in the budget the Institute had mentioned the provision for pension. It is not the case of respondent no.2 that the State government did not provide fund for meeting the liability mentioned in the annual budget of the Institute. What has been pointed out is that the budget did not mention that the funds for paying the pension will be provided by the State Government. It

appears difficult to understand the proposition made by the respondent no.2 in his counter affidavit. If the annual budget duly mentioned the provision for pension and upon consideration of the said annual budget the State government released funds taking into consideration the liability of the Institute on that account the same will be in the nature of funds as envisaged under Section 9(g) of the Act of 1964 and, at this stage, after about 30 years, the State Government would be estopped from saying that the State Government never considered payment of pension as a responsibility to pay. The government approved the budget and provided additional funds to meet the liabilities it would amount to consideration and acceptance of responsibility, may be in form of grants only.

30. While it is true that the Board discussed the agenda item no.7 in its meeting held on 15.02.1985 keeping in mind the recommendations of the Committee on retirement benefits that it may be implemented provided that the scheme be operated from the Institute's resources and that no separate grant would be sought for from the government, but the fact remains and are evident from the records as also from the conduct of the State government that the liability on account of pension was duly mentioned in the annual budget which was placed before the State Government in terms of sub-section (2) of Section 10 of the Act, 1964. The State Government

would have approved or disapproved the annual budget or part thereof, but once the State Government accepted the annual budget and released funds to the Institute, a legitimate expectation arose to the Institute that the State government would support the scheme for payment of pension and for that reason if disbursement on account of pension were made by the Institute out of the funds/financial assistance received from the State government, nothing wrong may be found in the same.

31. In this case, admittedly, the petitioners were getting their pension over decades, but all of sudden the pension was stopped for no fault on their part. It is well settled by judicial pronouncements that the payment of pension is not a charity as the employees who have been given their best at the young age and have devoted themselves to the service of the Institute cannot be deprived of the benefits which accrued to them by virtue of a legal and valid resolution of the Institute dated 15.02.1985. Those who were getting pensionary benefits cannot be deprived of the same in the name of financial constraints by the Institute. It is liability of the Institute to continue with such payments on account of pension/family pension which were being allowed to the writ petitioners-appellant in the present case.

32. We have come across the contention of the Institute

that subsequently the Board of Control in its meeting held on 06.09.2014 as contained in Annexure-B to the counter affidavit of respondent nos.4 and 5 took a decision and resolved that it is not possible to pay pension from internal resources and agreed in principle to continue the pension provided the Government of Bihar concurs and gives financial support for this purpose. The Board of Control further resolved not to revise pension unless earmarked funds are made available on this head from the Government of Bihar. Consequences of the resolution taken on 06.09.2014 as contained in Annexure-B to the counter affidavit of respondent nos.4 and 5 may only be prospective and cannot be implemented with retrospective effect in so far as it relates to those who have rendered their service knowing the Resolution dated 15.02.1985 such as the present appellants. It is well settled that the payment of pension is the condition of service and once an employee has entered into contract of service knowing fully well the terms and conditions thereof the same cannot be unilaterally taken away by an employer.

33. At last, we also record that the State government has established the Institute way back in the year 1964 by special Statute to undertake teaching and research in social sciences and several other purposes which are duly mentioned in Section 4 of the Act, 1964. Initially, when the Institute was established its liability on

account of maintenance or salary and post-retiral dues might have been within its reach, however, over the period as it appears the Institute through its Board of Control duly represented by the State took certain decisions which were having financial consequences. One of the financial consequences arose on account of implementation of the pension scheme but then liability on account of pension was duly mentioned in the annual budget which was placed before the government. If the government has accepted the annual budget of the Board and provided assistance taking into consideration the total liability mentioned in the annual budget, at this stage after over three decades, it is not expected from a welfare State that a drastic reversal and adversarial stand would be taken by the government effecting the livelihood of the retired employees or their widows and dependents at the evening of their life when they are in need of support, an expectation which has to be termed as a 'legitimate expectation' on the part of the retired employees coupled with this enforceable rights by virtue of Resolution dated 15.02.1985. The State government and/or Board of Control may as a matter of policy decision should take view on the entire matter afresh and decide the issues arising from the aforementioned discussions but such decisions may have only a prospective implementation. So far as the present case is concerned, the State government is bound to provide financial assistance/support in the same manner as was being done earlier when the annual budgets were containing the liability on account of pension and the government did not raise any objection in this regard, rather continued to provide assistance may be in a different name or head.

34. In result, the impugned judgment of the learned Writ Court is set aside, the writ application is allowed. The petitioners are held entitled for payment of the arrears as well as current pension which shall be paid by the Institute and for which the financial assistance would be provided by the State government within a period of three months from the date of receipt/production of a certified copy of this order.

35. The Letters Patent Appeal is allowed.

(Rajendra Menon, CJ)

Arvind/-

(Rajeev Ranjan Prasad, J)

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	20.03.2018
Transmission Date	N/A