IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3582 of 2017

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1. Mithilesh Kumar, S/o of Late Mathura Sharma, Resident of Village- Sultanpur, P.S.- Hulasganj, District- Jehanabad. Superannuated from the Post of Head Clerk, while posted in Sub-Divisional Agriculture Office (Extension), Hilsa, District- Nalanda. At present District Agriculture Office, Nalanda.

2. Braj Bhushan Singh, S/o Late Gaya Prasad Singh, R/o Girija Nagar, Suresh Colony, P.O. and P.S. Sadar, Hazaribagh, Distt- Hazaribagh. At Present Posted as Head Clerk, in the Office of Joint Director, Agronomy, Patna Division, Mithapur, Patna.

3. Dilip Kumar Sinha, S/o Late Tapeshwar Prasad Sinha At + P.O. Farbisganj, Mohalla-Post Office Chouk, Distt-Araria, superannuated from the Post of Head Clerk while Posted in the Office of Sub-Divisional Agriculture (General) Office, Hilsa (Nalanda).

4. Ram Raja Prasad, S/o Late Ganesh Prasad, R/o Village-Torwa, P.S. Jharaukhar (Ghorasahan), Distt-East Champaran. At Present Posted as Head Clerk in Sub-Divisional Agriculture Office, Mithapur, Patna.

5. Amrendra Kumar, S/o Late Bundi Ram, At + P.O.Wazirganj, Distt-Gaya. Superannuated from the Post of Head Clerk While Posted in the Office of Project Executive Officer, Kasba, Distt- Purnea.

6. Satya Narayan Sharma, S/o Late Singheshwar Singh, R/o Village-Mokamah (Sakarwar) Tola), P.S. Mokamah, Distt-Patna. Superannuated From the Post of Head Clerk While Posted in the Office of Project Executive Officer, Katihar.

7. Ram Babu Singh, S/o Late Gorakh Singh, R/o Village-Mohanpur, Via-Rajaura, Mufasil, Begusarai, Distt-Begusarai, Superannuated From the Post of Head Clerk While Posted in Sub-Divisional Agriculture Office, Dalsingsarai.

8. Dinkar Jha S/o Late Vedanand Jha, R/o Village-Bhawanipur, Vaya-Naugachhia, Distt-Bhagalpur. Superannuated From the Post of Head Clerk While Posted in, Sub-Divisional Agriculture Office, Distt.-Bhojpur.

9. Sanjeev Kumar-1, S/o Late Nand Kumar Prasad, Flat No.-1-2, Block-A, Paradise Apartment, New Aria, Kadamkuan, Distt-Patna, At Present Posted as Head Clerk in District Agriculture Office, Mithapur, Patna.

10. Sanjeev Kumar-II, S/o Late Arjun Prasad, R/o Village-Fatahpur, P.O. & P.S. Gogri Jamalpur, Distt-Khagaria, At Present Posted as Head Clerk, in Sub-Divisional Agriculture Office, Danapur, Distt-Patna.

11. Lalan Prasad, S/o Late Ram Nath Prasad, At-Sandha Khewaji Tola, P.O. Sandha, Distt-Saran (Chapra), Superannuated on 31-01-2017 While Posted as Head Clerk, Sub-Divisional Agriculture Office, Chhapra, Distt-Saran.

12. Rabindra Kumar S/o Late Mathura Prasad, At Mandiri, Post-G.P.O. P.S. Budha Colony, Distt-Patna. Superannuated From the Post of Head Clerk While Posted in the Office of Joint Director Agriculture, Patna.

13. Binod Prasad Saha, S/o Dhan Lal Sah, R/o Village -Tikapur, P.S. Kasba, Distt-Purnea, Superannuated From the Post of Head Clerk While Posted in the Office of Project Executive Officer, Korha, Distt.-Katihar.

14. Bhubneshwar Lal Mandal, S/o Late Arjun Lal Mandal, At + P.S. Kasba, Distt-Purnea, Superannuated From the Post of Head Clerk While Posted in Project Executive Officer, Araria, Distt-Araria.

15. Md. Sarif S/o Late Abdul Kasim, At Present Posted as Head Clerk, Sub-Divisional Agriculture Office (General), Sitamarhi. Superannuated from the Post of Head Clerk While Posted in the Sub-Divisional Office, Sitamarhi.

16. Indra Kant Jha, S/o Late Ram Chandra Jha, At + P.O. Goghardiha, Distt-madhubani Superannuated from the Post of Head Clerk, While Working in the office of Joint Director Agriculture, Gaya.

17. Jitendra Pandey @ Jitendra Kumar Pandey, S/o Late Haribansh Pandey, R/o Village-Daud Nagar, Distt-Aurangabad. Superannuated on 31.07.2015 while Posted as Head Clerk, Project Extension Office, Mohania, Distt-Kaimur.

... ... Petitioners

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Department of Finance, Old Secretariat, Patna, Bihar.
3. The Principal Secretary, General Administrative Department, Old Secretariat, Patna, Bihar.
4. The Agriculture Production Commissioner, Department, of Agriculture, New Secretariat, Patna, Bihar.
5. The Principal Secretary, Department of Agriculture, New Secretariat, Patna, Bihar.

... ... Respondents

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With

Civil Writ Jurisdiction Case No. 4429 of 2017

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1. Ram Yash Sah, S/o Sri Yougeshwar Sah, R/o village-Rambhelahi, P.S. Parihar, Distt. - Sitamarhi. At Present an employee of Building Construction Department, Government of Bihar, Patna and presently on Deputation as Electrical Junior under Electric Works Division, Muzaffarpur, Building Construction Department, Bisheshraiya Bhawan, Patna.

2. Rama Kant Singh, S/o Late Gupteshwar Singh, R/o village-Kapasia, P.S. Kandawa, Distt. - Chandauli, State of U.P. At

present posted as Electrical Junior Engineer, Under Electrical Works Division, Darbhanga, Building Construction Department, Vishesaraiya Bhawan, Bailey Road, Government of Bihar, Patna.

3. Raj Narayan Upadhaya, S/o Late Baidya Nath Upadhaya, R/o village-Kazipura, P.O. Doriganj, Distt. - Chapra, Presently Posted as Electrical Junior Engineer under Electrical Works Division, Darbhanga, Building Construction Department, Government of Bihar, Patna
4. Kaushal Kishore Mandal, S/o Late Dahogi Mandal, R/o village - Kamal Nagar Colony, P.S. Mojahitpur, Distt. - Bhagalpur Superannuated from the post of Electrical Junior Engineer, Electrical Estimating Division No. 2, Building Construction Department, Bisheshraiya Bhawan, Patna Presently as reorganized Electrical Works Division, Darbhanga, Building Construction Department, Government of Bihar, Patna

... ... Petitioners

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Finance, Old Secretariat, Patna, Bihar.
3. The Principal Secretary, General Administrative Department, Old Secretariat, Patna, Bihar
4. The Agriculture Production Commissioner, Department of Agriculture, New Secretariat, Patna, Bihar
5. The Principal Secretary, Department of Agriculture, New Secretariate, Patna, Bihar
6. The Principal Secretary, Building Construction Department, Bishesaraiya Bhawan, Bailey Road, Patna
7. The Administrator, Bihar State Agriculture Marketing Board (dissolved), Pant Bhawan, Bailey Road, Patna
8. The Accountant General, Bihar, Birchand Patel Path, Patna

... ... Respondents

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With

Civil Writ Jurisdiction Case No. 5374 of 2017

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Nandu Singh, S/o Late Ram Kathin Singh, R/o Village- Bajitpur, P.S. Ghoshi, Distt.- Jehanabad, Superannuated from the post of Block Panchayati Raj Officer, Block- Maner, Distt.- Patna.

... ... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Finance, Old Secretariat, Patna, Bihar.
3. The Principal Secretary, General Administrative Department, Old Secretariat, Patna Bihar.
4. The Agriculture Production Commissioner, Department of Agriculture, New Secretariat, Patna, Bihar.
5. The Principal Secretary, Department of Agriculture, New Secretariat, Patna Bihar.
6. The Principal Secretary, Panchayati Raj Department, New Secretariat, Vikash Bhawan, Government of Bihar, Patna.
7. The Administrator, Bihar State Agriculture Marketing Board (dissolved), Pant Bhawan, Bailey Road, Patna.
8. The Accountant General Bihar, Birchand Patel Path, Patna.

... ... Respondents

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With

Civil Writ Jurisdiction Case No. 5653 of 2018

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Dilip Kumar Chaudhary, S/o Late Rambriksha Chaudhary, Resident of Mohalla- Nehru Nagar (North), P.S.- Patliputra, District- Patna.

... ... Petitioner

Versus

1. The State of Bihar through the Agriculture Production Commissioner, Department of Agriculture, Government of Bihar, New Secretariat, Patna.
2. The Agriculture Production Commissioner, Department of Agriculture, Government of Bihar, New Secretariat, Patna.
3. The Secretary, Department of Agriculture, Government of Bihar, New Secretariat, Patna.
4. The Director, Department of Agriculture, Government of Bihar, New Secretariat, Patna.
5. The Director, Horticulture, Directorate, New Secretariat, Patna.
6. The Bihar State Agriculture Marketing Board (now repealed), Pant Bhawan, Bailey Road, Patna through its Administrator.
7. The Administrator, The Bihar State Agriculture Marketing Board (now repealed).
8. The Accountant General, Bihar, Veerchand Patel Marg, Patna.

... ... Respondents

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With

Civil Writ Jurisdiction Case No. 8434 of 2017

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1. Ashok Kumar, Son of Late Ganga Prasad, Resident of Village- Chanpatiya, P.S. Chanpatiya, District- West Champaran.

2. Dipnarayan Tiwary, Son of Late Sipahi Tiwary, Resident of Village- Mamarkha, P.S. Govindganj, District- East Champaran.

3. Gauri Shankar Sah, Son of Late Manu Sah, Resident of Village- Hira Pakar, P.S. Manua Pul, District West Champaran.

4. Nagendra Singh, Son of Late Collector Singh, Resident of Village- Parsauna, P.S. Ramgarhwa, District- East Champaran.

5. Angad Thakur, Son of Late Ram Ekbal Thakur, Resident of Village- Sinhasini, P.S. Ramgarhwa, District- East Champaran.

6. Rajwanshi Ram, Son of Late Hari Ram, Resident of Village- Sukhlahi, P.S. Ramgarhwa, District East Champaran.

7. Vinay Kumar Srivastava, Son of Late Vasudev Prasad, Resident of Village- Damodarpur, P.S. Govindganj, District East Champaran.

8. Krishna Ram, Son of Late Gaya Ram, Resident of Village- Sakhubania Jamunia, P.S. Shikarpur, District- West Champaran.

9. Krishna Baitha, Son of Mukhlal Baitha, Resident of Village- Ujjain Tola, P.S. Bettiah, District West Champaran.

10. Arjun Singh, Son of Late Muneshwar Prasad Singh, Resident of Village- Bagh Said Khan, P.S. Biddupur, District- Vaishali.

11. Vinay Kumar Mishra, Son of Late Awdhesh Mishra, Resident of Village- Kehunia, P.S. Shikarpur, District- West Champaran.

12. Dewraj Prasad Yadav, Son of Late Dwarika Raut, Resident of Village- Puraig Gosai, P.S. Chanpatiya, District- West Champaran.

13. Pramod Kumar, Son of Late Janakdhari Prasad, Resident of Village- Har Saraiya, Post Ojhwaliya, District- West Champaran.

14. Umesh Prasad, Son of Jagdish Prasad, Resident of Mohalla- Shivganj, Ward No. 8, P.S. Shikarpur, District- West Champaran.

15. Javed Akhtar, Son of Late Mohd. Taiyab, Resident of Village- Bhola Tola, P.S. Chanpatiya, District- West Champaran.

16. Sarful Hoda, Son of Late Md. Muslim, Resident of Village- Karanmeya, P.S. Mofussil Bettiah, District- West Champaran.

17. Nagendra Prasad, Son of Late Laxmi Prasad, Resident of Kotwali Chowk, P.S. Mofussil Bettiah, District- West Champaran.

18. Ramjit Choudhary, Son of Late Nathu Choudhary, Resident of Village- Kathgharwa, P.S. Shikarpur, District- West Champaran.

19. Baleshwar Prasad, Son of Late Adya Prasad, Resident of Village- Sherwa, P.S. Shikarpur, District- West Champaran.

20. Reyazuddin Mian, Son of Late Nathuni Mian, Resident of Village- Bankar, P.S. Chanpatiya, District- West Champaran.

21. Brij Bihari Mahto, Son of Late Ram Govind Mahto, Resident of Village- Ghumnagar, P.S. Shikarpur, District- West Champaran.

... ... Petitioners

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
4. The Agriculture Production Commissioner, Agriculture Department, Government of Bihar, Patna.
5. The Principal Secretary, Agriculture Department, Government of Bihar, Patna.

... ... Respondents

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With

Civil Writ Jurisdiction Case No. 14203 of 2008

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1. Sushil Kumar, son of late Rajdeo Prasad, south of Kacchi Talab, Saristabad, Gardanibagh, P.S. & P.O.- Gardanibagh, Town and District- Patna, at present 303 Aditya Homes, Anandpur, West Boring Canal Road, P.S.- Shri Krishna Puri, P.O.-Patna G.P.O., Town & District- Patna.

2. Rakesh Kumar Sinha, son of Ram Jatan Prasad, Anandpuri, West Boring Canal Road, P.S.- Shri Krishna Puri, P.O.-Patna G.P.O., Town and District- Patna.

... ... Petitioners

Versus

1. The State of Bihar.
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.

3. Secretary-cum-Commissioner, Finance Department, Government of Bihar, Old Secretariat, Patna.
4. Secretary, Agriculture Department, Government of Bihar, Old Secretariat, Patna.
5. Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Old Secretariat, Patna.
6. Principal Secretary, Mantri Mandal Sachivalay, Government of Bihar, Old Secretariat, Patna.
7. The Deputy Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna.
8. Administrator, Bihar State Agricultural Marketing Board, Patna Bhawan, Patna.

... ... Respondents

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With

Civil Writ Jurisdiction Case No. 16773 of 2017

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1. Ram Surat Singh, Son of Late Shankar Singh, Resident of Village-Chhitratand, P.S.-Chenari, District-Rohtas.
2. Bijendra Prasad Singh Yadav, Son of late Mangal Prasad Singh Yadav, Resident of Village-Amari, P.S.-Dharahra, Districr-Munger
3. Karamchand Sah, Son of Late Dwadashi Sah, Resident of Village-Tekniwash, P.S.-Revilganj, district-Saran at Chapra
4. Tulakant Jha, Son of Late Rajeshwar Jha, Resident of Village-Navkarhi, P.S.-Benipatti, District-Madhbani.
5. Naval Kishore Praad Singh, Son of Late Prasadi Mandal, Resident of Village-Mozaffara, Bardih, P.S.-Islampur, District-Nalanda at Biharsharif.
6. Ved Prakash Lal, Son of Late Ganesh Prakash Lal, Resident of -A/307, Durga Marine Drive, East of Rajapur Pul, Durja, P.S.-Budha Colony, Patna-800001.
7. Ajit Kumar Roy, Son of Late Phulchand Roy, Resident of Village-Jagatpur, Police Station and District-banka.

8. Aanadi Bhagat, Son of Late Munshi Bhagat, Resident of-Flat No. 202, Nirmala Kunj Apartment, Maurya Path, Khajpura, Patna-800014
9. Umesh Prasad Singh Son of Late Ram Kishun Mahto, Resident of-West Laxmi Nagar, Near Sheo Mandir, Khemnichak, Patna-800002
10. Rudra Prasad Singh, Son of Late Harivansh Singh, Resident of -5/1073, Sheo Sada, New Colony, katharibagh Road, Chapra, P.S.-Town Chapra, District-Saran at Chapra
11. Mostt. Vijaya Kumari, Wife of Late Kameshwa Mahto, Resident of Virkaur Singh Colony, Behind Durga Palace, P.S. and District-Samastipur.

... ... Petitioners

Versus

1. The State of Bihar through the Agricultural Production Commissioner, Department of Agriculture, New Secretariat Building, Bihar, Patna.
2. The Agricultural Production Commissioner, Department of Agriculture, New Secretariat Building, Bihar, Patna
3. The Principal Secretary, Department of Finance, Old Secretariat Building, BIhar, Patna.
4. The Principal Secretary, General Administration Department, Old Secretariat, Bihar, Patna.
5. The Secretary, Rural Works Department, Vishweshraiya Bhawan, Bailey Road, Bihar, Patna.
6. The Principal Secretary, Building Construction Department, Vishweshraiya Bhawan, Bailey Road, Bihar, Patna
7. The Principal Secretary, Irrigation Department, Sinchai Bhawan, Bihar, Patna.
8. The Administrator, Bihar State Agricultural Marketing Board (Dissolved), Pant Bhawan, Bailey Road, Bihar, Patna
9. The Accountant General, Birchand Patel Path, Bihar, Patna.

... ... Respondents

Appearance :
(In Civil Writ Jurisdiction Case No. 3582 of 2017)

For the Petitioner/s : Mr. Jai Prakash Verma
For the Respondent/s : Mr. Chittranjan Sinha -Paag2

(In Civil Writ Jurisdiction Case No. 4429 of 2017)

For the Petitioner/s : Mr. Jai Prakash Verma, Advocate
Mr. Sanjeev Kumar, Advocate
For the State : Mr. Alok Kumar, A.C. to S.C.-15

(In Civil Writ Jurisdiction Case No. 5374 of 2017)

For the Petitioner/s : Mr. Jai Prakash Verma, Adovcate
For the State : Mr. Sarvesh Kr. Singh, AAG-13
Mr. Ravi Kumar, A.C. to A.A.G.-13
For the Accountant General : Mr. Raghwanand, Advocate

(In Civil Writ Jurisdiction Case No. 5653 of 2018)

For the Petitioner/s : Mr. Sanjeev Kumar Mishra
For the State : Mr. Sarvesh Kumar Singh, A.A.G.-13

(In Civil Writ Jurisdiction Case No. 8434 of 2017)

For the Petitioner/s : Mr. Sanjeev Kumar Singh
For the State : Mr. Tej Pratap Singh, A.A.G.-13

(In Civil Writ Jurisdiction Case No. 14203 of 2008)

For the Petitioner/s : Mr. Suman Kumar
For the State : Mr. Pankaj Kumar Singh, A.c. to S.C.-14

(In Civil Writ Jurisdiction Case No. 16773 of 2017)

For the Petitioner/s : Mr. Jai Prakash Verma, Advocate
For the State : Mr. Chittaranjan Sinha, PAAG-2
For the Accountant General : Mr. S.M. Ehteshan, Advocate
Mr. Nishant Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
C.A.V. JUDGMENT
Date : 20-11-2018

Heard learned counsel appearing for the respective parties.

2. In these group of petitions, identical question has been raised and with consent of the parties, all the cases are being disposed of by this common judgment. For convenience the facts of C.W.J.C. No.16773 of 2017 are being considered for disposal of these group of petitions, if necessary the facts of other cases will be taken into consideration.

3. In these writ petitions, primarily question has been raised about the entitlement of coverage of old pension scheme having claimed that the new pension scheme has been enforced with effect from 01.09.2005, and as such, the petitioners are governed by the Bihar Pension Rule, 1956 i.e. old pension scheme.

4. All the petitioners either himself or their respective spouses were working in the Bihar State Agriculture Marketing Board. The legislature of Bihar has enacted Bihar Agricultural Produce Market (Repeal) Act, 2006, thereby the Bihar State Agriculture Marketing Board was dissolved. In the Repealing Act, Section 4(i) and (ii) postulate that all the properties purchased by the Committee or Board shall vest in the State Government and all liabilities including secured or non-secured shall be the liability of the State Government and after dissolution, the Administrator, or the Special Officer, shall take possession of all the assets movable or immovable including land, building and such other assets which is owned or possessed by the Board or the Committee or over which Board or the Committee has a legal claim. Clause- 4(iii) provides, immovable and moveable assets in possession of Administrator or Special Officer, as the case may be, shall remain in their possession for and behalf of State Government. Section 6 provides for absorption of officers and employees of Bihar Agriculture Marketing Board/Market Committee/Bazar Samiti. Clause-6(i) stipulates that on and from the enforcement of Repeal Act, all officers and employees of the Board, shall remain in employment, as if the Bihar Agriculture Produce Market Act has not been repealed and they shall continue to be paid same salary and allowances as was payable on the date of repeal of the Act till such time State Government would take such final decision as is provided hereinafter. Section 6(ii) provides that the Government shall constitute a Committee of Secretaries consisting of three secretaries, who shall prepare detail scheme of absorption, retirement, compulsory retirement or voluntary retirement, other service conditions of officers and employees of the Board and the Committee. The scheme prepared by group of Secretaries shall be placed before the State Government within two months from the date of enforcement of the Repeal Act.

5. On perusal of the aforesaid provisions, it is clear that even after the dissolution of the Board those who were working will continue to be remained in employment till the final decision is taken in what manner the employees will be rehabilitated under the scheme either by way of absorption, retirement, compulsory retirement or voluntary retirement.

6. In pursuance thereof, the Government of Bihar has issued the memorandum dated 02.09.2008, wherein it has been provided that the employees of the Agriculture Marketing Board will be absorbed on the vacant posts of respective departments on the same terms and conditions which will be applicable from the date of their absorption and on the date of issuance of memorandum they will be treated to have been an absorbed as an employee of the State Government and will be entitled to the benefit which will be applicable on the date of their absorption. In Clause 5 of the memorandum, it has specifically been mentioned that they will be governed by the new pension scheme and the payment of retiral benefit with respect to the period of the Board will not be liability of the State Government or respective department. The aforesaid memorandum was challenged by some of employees of the Bihar Agriculture Board in C.W.J.C. No.6997 of 2008 and other analogous cases and a Three Men Committee again revisited the grievance and issued a fresh Resolution dated 17.05.2010, mentioning therein that they will get the revised pay scale of absorbed post and they will also be entitled to the arrears of salary from 02.09.2008. The said groups of writ petitions were disposed of on 27.07.2010, wherein the Court has given following direction:-

> *"Let Agriculture Production Commissioner ensure absorption of the petitioners and all others, who are included in the Appendix-1 attached to the Resolution dated 17.05.2010, in the replacement/revised scale of the scale in which they were earlier serving the Board before its dissolution with continuity of service w.e.f. 2.09.2008 within two months from the date of receipt/production of a copy of this order before the Agriculture Production Commissioner."*

7. In pursuance thereof, the decision was taken by the Council of Ministers on 03.06.2011, accordingly the Resolution was issued about the absorption of the rest employees, wherein it has been mentioned that in consequences of the absorption their date of absorption will be treated to be the date of their joining and will be treated to be the new appointee and on absorption, they will be governed by the new pension scheme. The petitioners were not satisfied with the manner they were absorbed as rider was given that they will be treated to be the fresh employees of the State Government as well as they will be governed by the New Pension Scheme, which compelled the petitioners to approach this Court in C.W.J.C. No. 4452 of 2012 and analogous cases, claiming that their absorption in different departments cannot be treated to be a fresh appointment and they are entitled to continuity in service and all the benefits arising thereof. The Court the decided with respect to the aforesaid points in the following manner:-

> *"… In view of the aforesaid principles as laid down by the Apex Court, it is difficult to visualize the situation, particularly in view of the provisions of Section 6 of the Repeal Act, treating the absorptions of the officers/employees of the erstwhile Board/Committee/Samiti in different government services as fresh appointment to be effective from the date of absorption. This interpretation would be in complete antithesis to the concept of coalescence and fusion which according to the well settled principles, in the present context, the term 'absorption' connotes. This Court, therefore, holds that the condition stipulating that the absorption in different government services of the officers/employees of the erstwhile Board/Committee/Samiti shall be treated as fresh appointment, as contained in the resolution dated 02.09.2008 and follow up resolutions/notifications of different dates with regard to the respective writ petitioners, is not legally sustainable. The said condition in the*

resolution dated 02.09.2008 and follow up revised resolutions/notifications with regard to the respective writ petitioners is accordingly quashed and the writ petitioners are held to be entitled to the continuity of their services. It is further directed that this order shall apply to all similarly situated officers/employees of the erstwhile Board/Committee/Samiti, as the case may be, and they are not required to approach this Court individually for the same relief..........."

"... Following the aforesaid dictum, this Court, in the fitness of things, directs the respondents/authority to lay down equitable principles with regard to fixation of seniority of the petitioners and other similarly absorbed officers/employees of the Board / Committee / Samiti in their respective merged cadres. It is expected that the decision in this regard shall be taken by the concerned respondent authorities expeditiously and preferably within a period of three months from the date of receipt/production of this order........."

While considering the claim regarding coverage under the old pension scheme, the following directions were issued:

> *"........This Court is not inclined to enter into this controversy, and after overall consideration of the facts and circumstances, this Court directs the respondent/authority to reconsider the*

condition restricting the absorbed officer/employee to the new pension scheme, as contained in the resolution/notifications dated 02.09.2008 and follow up resolution/notifications, in accordance with law keeping in view the above mentioned facts and discussions. Such reconsideration must be bestowed by the respondent/authority expeditiously and preferably within a period of three months from the date of receipt/production of this order..."

8. In this manner the Court quashed the resolution/notification dated 02.09.2008 and follow up resolutions/notifications issued on different dates and held that they are entitled to continuity of their service and the same benefit was extended to rest employees, who are not party of the writ petitions. But, the issue of applicability of old pension scheme was left open for the decision of the Board.

9. In the event of non-compliance of the aforesaid order, the petitioners approached this Court by way of filing M.J.C. No.2968 of 2015 and analogous cases. During the pendency of the contempt petitions, resolution dated 13.07.2016 was issued, wherein it has been stipulated that the employees who were absorbed having been granted the benefit of A.C.P., is indicative of fact that they have been treated to be continuity in service, in such circumstance, direction issued in the writ petition was complied with, but with regard to entitlement of applicability of old pension scheme. In the said resolution dated 13.07.2016 (Annexure-8), it has been stipulated, in the dissolved Bihar Agriculture Produce Market Board, no pension scheme was available to its employees as they were covered under contributory Provident Fund Scheme. After dissolution of the Bihar Agriculture Market Board, payments on the aforesaid items were already made to all employees and employees will continue to be governed under the same scheme.

10. In the present case, only issue has been raised by the petitioners that they will be governed by the old pension scheme, as on absorption they will be treated to be the employees of the State Government relate back to right from their entry in the Bihar Agriculture Marketing Board. Emphasis has been given that they will be treated to be the continuous employees "as if" their services have not been terminated or discontinued, in such circumstance, employment in the Bihar Agriculture Marketing Board prior to enforcement of the new pension scheme will not in any manner make them dis-entitled to the benefits arising from old pension scheme.

11. During the argument, it has been submitted that the payment of retiral dues was only applicable or enforceable to those who have opted for new pension scheme not to others who entered into the service of the State Government by the process of absorption. It has further been stated that any payment of retiral dues with respect to the period spent in Agriculture Marketing Board will not cause any harm or will not make them dis-entitled for coverage of old pension scheme. Further stated that when the Government itself has treated them in continuous service, in such circumstance, making the petitioners dis-entitled of the old pension scheme, is an arbitrary and perverse exercise of power by the State Government and as such, they are entitled to the benefit under old pension scheme.

12. Whereas, learned counsel for the State has taken plea that though they have been treated in continuous service for other purposes, such as, for A.C.P. and other incidental matters, but the Three Men Committee has demarcated a line with respect to the entitlement of the benefits arising from the old pension scheme and has stated that as their observation is recent one will not make them entitled for the benefit of old pension scheme, on each occasion the Three Men Committee opined and took decision that they are governed by the new pension scheme and now they cannot be allowed to turn round and challenge the decision of the State Government with regard to entitlement of benefits under the new Pension Scheme.

13. Having considered the rival contentions of the parties, for deciding the issue it will be relevant to note that the Government and its functionaries has liberty to fix a particular date for the entitlement of benefits arising from a particular scheme. Only the prohibition is that the fixation of cut off date should not be in the manner of picking out a date from the hat or fixing the date arbitrarily.

14. It is well settled that the fixation of cut off date for granting retirement benefits under the different schemes incorporated in the subordinate legislation, thereby, creating two distinct and separate classes of employees is well within the ambit of Article 14 of the Constitution of India. The differential treatment of two sets of employees appointed prior to the fixed date would not offend Article 14 of the Constitution of India, but the cut off date must not be arbitrary, unreasonable and offends Article-14 of the Constitution of India. When a line is drawn for the applicability to the new pension rules, there cannot be any mathematical precision or logical way for fixing it precisely, the decision of the legislature or its delegate must be accepted unless it can be said that it will not be reasonable to accept it. When fixation of cut off date has reasonability, it cannot be said that picking out a date from the hat. It is also to be seen that when there is a conflict with the sympathy and the law, the law will prevail over the sympathy and decision cannot be based upon the sympathy as it will perpetuate illegal defect.

15. The aforesaid proposition laid down in the case of ***Sudhir Kumar Consol vs. Allahabad Bank*** reported in ***(2011) 3 S.C.C. 486***. It will be relevant to quote paragraph nos. 16 to 32 which are as follows:-

> *"16. We have carefully considered the rival submissions of the appellant in person and the learned counsel for the respondent Bank. In our opinion, the appellant is not entitled to claim pensionary benefit in view of Regulation 46 (1) of the 1979 Regulations. The said Regulation 46 (1) provides pensionary benefit under the existing supplementary Pension Scheme in lieu of gratuity only to those officers who were officers on the appointed date i.e. the officers who were appointed on or before 01.07.1979. Moreover, Provision 3 of the Old Pension Scheme stipulates that the officers who are recruited or promoted after 01.07.1979 i.e. the date of implementation of the 1979 Regulations, are not entitled for pension as per the said Regulations. It is an admitted fact that the*

appellant was working with the respondent as a Clerk on 01.07.1979 and was promoted as an officer only in 1983. Therefore, the appellant is not eligible to claim any benefit under the Old Pension Scheme.

17. It is well settled law that the vires of any subordinate legislation can be challenged on the ground that it is arbitrary, unreasonable and offends Article 14 of the Constitution of India. The 1979 Regulations were introduced with a view to standardize and provide comprehensive and compact set of rules in respect of wages and perquisites of the officers of the Bank. In furtherance of this object, Regulation 46 (1) of the 1979 Regulations provides pension in lieu of gratuity only to the officers appointed prior to or on 01.07.1979 and not to officers appointed, recruited or promoted thereafter. In this view, we are of the opinion that the said Regulation 46 (1) lays down a reasonable criteria for differentiation between the officers appointed prior to or on 01.07.1979 and after the said date. Hence the said Regulation 46 (1) is in consonance with the Article 14 of the Constitution of India.

18. Moreover, the fixing of the cut-off date for granting retirement benefits such as gratuity or pension under the different schemes incorporated in the subordinate legislation, thereby, creating two distinct and separate classes of employees is well within the ambit of Article 14 of the Constitution. The differential *treatment of two sets of officers appointed prior to the notified date would not offend Article 14 of the Constitution. The cut off date may be justified on the ground that additional outlay as involved or the fact that under the terms of appointment, the employee was not entitled to the benefit of pension or retirement.*

19. This Court in Union of India v. P.N. Menon has held : (SCC PP. 73-74, para 8)

> *"8. Whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised scheme in respect of post-retirement benefits, if implemented with a cut-off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. It shall not amount to "picking out a date from the hat", as was said by this Court in the case of D.R. Nim v. Union of India, in connection with fixation of seniority. Whenever a revision takes place, a cut-off date becomes imperative because the benefit has to be allowed within the financial resources*

available with the Government."

The Court further observed: (P.N. Menon case, SCC p.76, para 14)

> *"14... No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the court should only be, while examining any such grievance, to see, as to whether a particular date for extending a particular benefit or scheme, has been fixed, on objective and rational considerations."*

20. In State Government Pensioners' Association v. State of A.P., the order in question provided that retirement gratuity may be one-third of the pay drawn at the time of retirement for every six-monthly service, subject to maximum of 20 months' pay limited to 30,000. This order was made effective from 01.04.1978. The petitioners, who were Government employees and had retired before 01.4.1978, contended that the gratuity, being a part and parcel of the pensionary benefits, they were also entitled to the same retrospectively. On behalf of the State, it was pointed out that the gratuity which had accrued to the petitioners prior to 01.4.1978, was calculated on the then existing rules and pay, and such petitioners formed a distinct class, for the purpose of payment of gratuity, from others who retired after

01.04.1978, the date from which the revised pension rules were made applicable by the Government. This Court held that the upward revision of gratuity which took effect from a specified date i.e. 1-4-1978 with prospective effect, was legal and not violative of Article 14 of the Constitution.

21. In Action Committee South Eastern Railway Pensioners v. Union of India, this Court has examined the concept of `dearness pay', including the two options for retirement benefits given to the employees which had been framed fixing a cut-off date. This Court held: (SCC p.550, para 12)

> *"12. ...Learned counsel for the petitioners only submitted that if the formula adopted in the case of employees having retired after March 31, 1985 vide Circular dated 17-5-1985 is applied in the case of the petitioners then it would make substantial difference in the calculation of the amount of gratuity and commuted value of pension. As already discussed above no such claim can be allowed nor the same can be permissible on any principle of equality enshrined under Article 14 of the Constitution inasmuch as the petitioners form a different class from those who were continuing in service on or after 31-3-1985. The petitioners of their own accord had opted for the choice given to them*

and the principle enunciated in D.S. Nakara case cannot be applied in the case of the petitioners."

22. In All India Reserve Bank Retired Officers' Assn. v. Union of India, the Retired Officers' Association of the Reserve Bank of India questioned the validity of introduction of pension scheme in lieu of Contributory Provident Fund Scheme. The bank employees, who retired prior to 1-1-1986, had not been given benefit of the said Pension Scheme. This Court held that the said cut-off date was neither arbitrary nor artificial or whimsical. It was further observed: (SCC pp. 677-78, para 10)

"10. ... The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a Section of the pensioners and deny the same to others by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent

> *of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme." (Emphasis added)*

23. In UGC v. Sadhana Chaudhary this Court has observed: (SCC p. 546, para 21)

> *"21. ... It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide off the reasonable mark."*

24. In T.N. Electricity Board v. R. Veerasamy, the pension scheme was applied differently to persons who had retired from service before 1-7-1986, and those who were in employment on the said date. This Court held: (SCC p. 421, para 15)

> *"15. ... We are of the view that the retired employees (respondents), who had retired from service before 1-7-1986 and those*

who were in employment on the said date, cannot be treated alike as they do not belong to one class. The workmen, who had retired after receiving all the benefits available under the Contributory Provident Fund Scheme, cease to be employees of the appellant-Board w.e.f. the date of their retirement. They form a separate class."

25. In State of Punjab v. Boota Singh this Court has held that the benefit conferred by the notification dated 9-7-1985 can be claimed by those who retire after the date stipulated in the notification and those who have retired prior to the stipulated date in the notification are governed by different rules. They are governed by the old rules i.e. the rules prevalent at the time when they retire. The two categories of persons are governed by different sets of rules. They cannot be equated. The grant of additional benefit has financial implications and the specific date for the conferment of additional benefits cannot be considered arbitrary.

26. This Court held: (Boota Singh Case, SCC p. 735, para 8)

"8. In Indian Ex-Services League v. Union of India, this Court distinguished the decision in Nakara case and held that the ambit of that decision cannot be enlarged to cover all claim by retirees or a demand for an identical amount of

pension to every retiree, irrespective of the date of retirement even though the emoluments for the purpose of computation of pension be different. We need not cite other subsequent decisions which have also distinguished Nakara case. The latest decision is in K.L. Rathee v. Union of India where this Court, after referring to various judgments of this Court, has held that Nakara case cannot be interpreted to mean that emoluments of persons who retired after a notified date holding the same status, must be treated to be the same. The respondents are not entitled to claim benefits which became available at a much later date to retiring employees by reason of changes in the rules relating to pensionary benefits."

27. In State of Punjab v. J.L. Gupta, this Court reiterating the views expressed in Boota Singh (supra), held: (J.L. Gupta case, SCC p. 738, para 5)

"5. The controversy involved in the present appeal and connected appeals is squarely covered by the aforesaid decision. The respondents are thus not entitled to claim benefits under the notification dated 9-7-1985 since the said benefits became available on a much later date of the retiring employees by reason of change in the rules relating to

> *pensionary benefits. In this view, the judgment of the High Court cannot be sustained."*

28. In Ramrao v. All India Backward Class Bank Employees Welfare Assn. this Court has held that, even for the purpose of effecting promotion, fixing of a cut-off date was neither arbitrary, unreasonable nor did it offend Article 14 of the Constitution. This Court further observed: (SCC p.88, paras 32-33)

> *"32. If a cut-off date can be fixed, indisputably those who fall within the purview thereof would form a separate class. Such a classification has a reasonable nexus with the object which the decision of the Bank to promote its employees seeks to achieve. Such classifications would neither fall within the category of creating a class within a class or an artificial classification so as to offend Article 14 of the Constitution of India.*
>
> *33. Whenever such a cut-off date is fixed, a question may arise as to why a person would suffer only because he comes within the wrong side of the cut-off date, but, the fact that some persons or a Section of society would face hardship, by itself cannot be a ground for holding that the cut-off date so fixed is ultra vires Article 14 of the Constitution."*

29. In State of Punjab v. Amar Nath Goyal, this Court held: (SCC p. 766, para 37)

> *"37. In the instant case before us, the cut-off date has been fixed as 1-4-1995 on a very valid ground, namely, that of financial constraints. Consequently, we reject the contention that fixing of the cut-off date was arbitrary, irrational or had no rational basis or that it offends Article 14."*

30) In State of Bihar v. Bihar Pensioners Samaj, this Court held: (SCC p.71, para 17)

> *"17. We think that the contention is well founded. The only ground on which Article 14 has been put forward by the learned counsel for the respondent is that the fixation of the cut-off date for payment of the revised benefits under the two notifications concerned was arbitrary and it resulted in denying arrears of payments to certain Sections of the employees. This argument is no longer res integra. It has been held in a catena of judgments that fixing of a cut-off date for granting of benefits is well within the powers of the Government as long as the reasons therefor are not arbitrary and are based on some rational consideration."*

31. We have sympathies for the appellant but, in a society governed by Rule of law, sympathies *cannot override the Rules and Regulations. We may recall the observations made by this Court while considering the issue of compassionate appointment in public service.*

32. In LIC v. Asha Ramachhandra Ambekar, wherein the Court observed: (SCC p. 721, para 10)

> *"10. ... The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. ... Yielding to instinct will tend to ignore the cold logic of law. It should be remembered that 'law is the embodiment of all wisdom'. Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it, however, inconvenient it may be."*

In the aforesaid judgment number of previous judgments have been taken into consideration and it is not necessary to multiply the decision for arriving to a particular conclusion.

16. Learned counsel for the petitioners has also put an emphasis about the meaning of "as if", placing reliance on the judgment of the Hon'ble Supreme court in the case of ***Rajasthan State Industrial Development and Investment Corporation and Another vs. Diamond & Gem Development***

Corporation Limited and Another reported in ***(2013) 5 SCC 470***, wherein it has been held that "as if", is used to make one applicable in respect of the others. The words "as if" create a legal fiction. The words "as if", in fact shows the distinction between two things and, such words must be used only for a limited purpose. Further says that legal fiction must be limited to the purpose for which it was created. "As if" creates a fiction of the existing of the thing which is in reality does not reflect.

17. It will be relevant to quote paragraph nos. 26 to 28 of the said judgment, which are as follows:-

> *"26. The expression "as if" is used to make one applicable in respect of the other. The words "as if" create a legal fiction. By it, when a person is "deemed to be" something, the only meaning possible is that, while in reality he is not that something, but for the purposes of the Act of legislature he is required to be treated that something, and not otherwise. It is a well settled rule of interpretation that, in construing the scope of a legal fiction, it would be proper and even necessary to assume all those facts on the basis of which alone, such fiction can operate. The words "as if", in fact show the distinction between two things and, such words must be used only for a limited purpose. They further show that a legal fiction must be limited to the purpose for which it was created. [Vide*

Radhakissen Chamria v. Durga Prasad Chamria, CIT v. S. Teja Singh, Ram Kishore Sen v. Union of India, Sher Singh v. Union of India, State of Maharashtra v. Laljit Rajshi Shah, Paramjeet Singh Patheja v. ICDS Ltd. (SCC p.341, para 28) and CIT v. Willamson Financial Services].

27. In East End Dwelling Co. Ltd. v. Finsbury Borough Council,\ this Court approved the approach which stood adopted and followed persistently. It set out as under: (AC p. 133)

> *" ... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs".*

28. In Industrial Supplies Pvt. Ltd. v. Union of India this Court observed as follows: (SCC p. 351, para 25)

> *"25. It is now axiomatic that when a legal fiction is incorporated in a statute, the court has to ascertain for what purpose the fiction is created. After ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried to its logical conclusion. The court has to assume all the facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. The legal*

effect of the words 'as if he were' in the definition of 'owner' in Section 3(n) of the Nationalization Act read with Section 2(1) of the Mines Act is that although the petitioners were not the owners, they being the contractors for the working of the mine in question, were to be treated as such though, in fact, they were not so."

(Emphasis added)

18. Learned counsel for the petitioners have placed reliance on the judgment of Jharkhand High Court passed in W.P. (S) No.1693 of 2012 (Elecius Lakra & Others vs. The State of Jharkhand and Another), which relates to the entitlement of the employees of the Board and Corporation were working on deputation in the previous department were absorbed will be governed by the old pension rules and the Court having decided that they will be governed by the old pension scheme. The same was affirmed by the Division Bench in L.P.A. No. 340 of 2013 and the same has also been affirmed by the Supreme Court in Civil Appeal No.13372 of 2015 and the Hon'ble Supreme Court has approved the judgment of the High Court, but the first paragraph of the aforesaid judgment and order of Hon'ble Supreme Court itself shows that those employees were working in Public Sector Undertaking where the job was pensionable, so in such circumstance, the Hon'ble Supreme Court held that when they are ultimately absorbed, in such circumstance, for the purposes of pension and retiral benefits, their past service shall be counted. However, in the present case, the facts are quite different that the petitioners were working in the Bihar Agriculture Marketing Board, there, there was no pension scheme rather the employees of the Bihar Agriculture Marketing Board were being governed under the Contributory Provident Fund scheme, inasmuch as, before the absorption the entire retiral dues such as entire provident fund amount including the contribution of employees, gratuity as well as other incidental retiral benefits having been paid to each of the employees or their respective spouses. In that circumstances, if it is held that petitioners would be governed by Old Pension Scheme and past service will be counted for granting pensionary benefit, then it would amount to granting the double retiral benefits, which cannot be envisaged under any situation, inasmuch as at the time of absorption of service in the State of Bihar, it has been made clear by the State Government, right from the beginning, that they will be governed by he new pension scheme and fixation of the cut off date by the State Government cannot be said in any manner to be unreasonable, arbitrary or suffers from any illegality, though due to intervention of the Court for other than the pensionary benefits, the previous period spent by the petitioners in the Bihar Agriculture Marketing Board have been taken into consideration, but if the plea of the petitioners regarding entitlement of the old pension scheme and counting the past period is taken into consideration, then it would bring an absurd situation.

19. For the foregoing reasons, this Court does not find any merit in these writ petitions. Accordingly, these writ petitions are dismissed.

(Shivaji Pandey, J)

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