

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 166 of 2018

In

Civil Writ Jurisdiction Case No. 6517 of 2011

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Mobina Khatoon, Wife of Late Abdul Jabbar, Resident of Village-Chilmil,
P.S.-Muffasil Begusarai, District-Begusarai.

.....Petitioner/Appellant

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Vishweshriya Bhawan, Patna.
2. The Engineer-in-Chief, Public Health Engineering, Department, Vishweshriya Bhawan, Patna.
3. The Chief Engineer, Public Health Engineering Department, Vishweshriya Bhawan, Patna.
4. The Superintendent Engineer, Public Health Engineering Department, Darbhanga.
5. The Executive Engineer, P.H. Division, Begusaria.

.....Respondents/Respondents

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With

Letters Patent Appeal No. 289 of 2018

In

Civil Writ Jurisdiction Case No. 6349 of 2016

- =====
1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
 2. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
 3. The Engineer in Chief Cum Special Secretary, Public Health Engineering Department, Government of Bihar, Patna.



4. The Chief Engineer, Department of Public Health Engineering (Mechanical) Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Circle, Muzaffarpur.
6. The Executive Engineer, Public Health Division, Sitamarhi.
7. The Sub Divisional Officer Cum Assistant Engineer, Public Health Engineering Sub Division, Sitamarhi.
8. The Sub Divisional Officer Cum Assistant Engineer, Public Health Engineering Sub Division, Sheohar.
9. The District Magistrate, Sitamarhi.
10. The District Accounts Officer, Sitamarhi.
11. The Treasury Officer, Sitamarhi.

.....Respondents/Appellants

Versus

1. Soniya Devi, Wife of Late Yugal Mahto, Resident of Village-Rampur Parari East, P.O.-Banchauri, P.S. and District-Sitamarhi.

.....Petitioner/Respondent 1st Set

2. The Accountant General (A & E), Bihar, Patna.

.....Respondent/Respondent 2nd Set

Appearance :

(In Letters Patent Appeal No. 166 of 2018)

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|----------------------|---|
| For the Appellant/s | : Mr. Gajendra Kumar Jha, Adv.
Mr. Sushil Kumar Jha, Adv. |
| For the Respondent/s | : Mr. S. Raza Ahmad, AAG-5
Mr. Vishwambhar Prasad, AC to AAG-5
Mr. Alok Ranjan, AC to AAG-5 |

(In Letters Patent Appeal No. 289 of 2018)

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|------------------------------|-----------------------------------|
| For the Appellant/s | : Mr. Suresh Kumar, AC to GP-1 |
| For the Accountant General | : Mr. Purushottam Kumar Jha, Adv. |
| For the Private Respondent/s | : Mr. Siyaram Pandey, Adv. |



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CORAM : HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE JUSTICE SMT. ANJANA MISHRA

And

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

C.A.V. JUDGMENT & ORDER

(Per : HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 04-02-2019

The matter under reference is whether the services rendered by a work-charged employee is to be taken into account for computing his pension and whether a work-charged employee is, in the first instance, entitled to pensionary and other benefits which are available to a government servant and secondly whether there is any availability of family pension to the widow of such deceased work-charged employee or compassionate appointment to his heirs in case of death during service.

2. A Division Bench of this Court noticed the difference of opinion in the two judgments delivered by two different Division Benches of this Court; one being in *Saraswati Devi Vs. The State of Bihar and Ors.*, reported in 2017 (3) PLJR 645, but which was delivered on



21.04.2015 and the other being in *The State of Bihar and Ors. Vs. Bimli Devi*, though reported in *2016 (1) PLJR 452*, but which was delivered later than *Saraswati Devi Vs. The State of Bihar and Ors.* (supra) on 24.11.2015. The Division Bench also took note of the fact that a Full Bench decision of this Court in the case of *State of Bihar and Anr. Vs. Bhagwan Singh (since dead)*, reported in *2014 (4) PLJR 229*, has not been taken note of in both the aforesaid Division Bench judgments. Apart from the above, the Bench also took note of the fact that there is yet another relevant decision on the issue by the Apex Court in case of *General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi and Ors.*, reported in *(2009) 7 SCC 205*.

3. In order to resolve the difference of opinion by an authoritative pronouncement by a Full Bench, the present Full Bench has been constituted.

4. In *Saraswati Devi Vs. The State of Bihar and Ors.* (supra), the Division Bench of this Court was of the view that the widow of a work-charged employee was



entitled for the family pension and gratuity on account of services rendered by her husband in a work-charged establishment. In the aforesaid case, the husband of the petitioner (*Saraswati Devi*) was initially engaged on a daily-wage basis, but later he was treated as an employee in a work-charged establishment and died while in service. The petitioner, his widow, claimed family pension on the ground that her husband had worked for more than 30 years in the department in various capacities, entitling her to be paid family pension and gratuity. The Division Bench, after taking note of the provisions contained in Rules 58 and 59 of the Bihar Pension Rules, 1950 as well as Memo No. Pen 1024/69/11779F dated 12.08.1969 and Memo No. 1344 dated 04.02.1999 [contained in Bihar Public Works Department Code (*in short Bihar P.W.D. Code*)], came to the conclusion that a work-charged employee is necessarily to be treated at par with a temporary employee, who is entitled to pension under Rule 59 of the Bihar Pension Rules, 1950 and with respect to whom the Government's decision, contained in memo of



1969, is applicable. In other words, the Bench held that the services of the deceased work-charged employee was pensionable and, therefore, the widow of such employee was entitled to family pension.

5. In the case of *The State of Bihar and Ors. Vs. Bimli Devi* (supra), another Division Bench of this Court, which also was beset with a similar question, viz., whether the family members of a deceased employee who was appointed in a work-charged establishment would be entitled to family pension under the Bihar Pension Rules, 1950, conclusively held that the services of a work-charged employee is substantially and materially different from a government employee, permanent or temporary, and he is not entitled to pension, thereby foreclosing any claim of the family members of such petitioner to claim family pension or compassionate appointment in case of death during service. While coming to the aforesaid conclusion, the Division Bench took note of the provisions contained in Rule 58 of the Bihar Pension Rules, 1950 as well as the judgments delivered by the Supreme Court in



Jaswant Singh and Ors. Vs. Union of India and Ors.; [AIR 1980 SC 115] and *State of Rajasthan Vs. Kunji Raman*; [AIR 1997 SC 693] as well as two judgments delivered by different Benches of this Court, viz., *Kosi Project Workers Association Vs. State of Bihar and Ors.*, reported in 2007 (1) PLJR 358 and *Most. Roopkali Kuer Vs. State of Bihar*, reported in 2006 (1) PLJR 323.

6. Before delving into the issues referred to above, it would first be necessary to understand the nature and the status of a work-charged employee.

7. The Supreme Court in the case of *Jaswant Singh and Ors. Vs. Union of India and Ors.* (supra) had the occasion to explain the nature of a work-charged establishment and the status of an employee of such establishment. It would be profitable to quote paragraphs 42, 43 and 44 of the aforesaid judgment, which succinctly sum-up the nature of a work-charged establishment and the status of the employee of the aforesaid establishment.

42. A work-charged establishment broadly means an establishment of which the



expenses, including the wages and allowances of the staff, are chargeable to "work". The pay and allowances of employees who are borne on a work-charged establishment are generally shown as a separate sub-head of the estimated cost of the work.

43. The entire strength of labour employed for the purposes of the Beas Project was work-charged. The work-charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. They do not get any relief under the Payment of Gratuity Act nor do they receive any retrenchment benefits or any benefits under the Employees' State Insurance Schemes.

44. But though the work-charged employees are denied these benefits, they are industrial workers and are entitled to the benefits of the provisions contained in the Industrial Disputes Act. Their rights flow from that special enactment under which even contracts of employment are open to adjustment and modification. The work-charged employees, therefore, are in a better position than temporary servants like the other petitioners who are liable to be thrown out of employment without any kind of compensatory benefits.

8. Thus, what is of relevance to note is that
the wages and allowances of an employee of a work-



charged establishment are not paid from the Government revenue, but are chargeable to work and is shown as a separate sub-head of the estimated cost of the work. Since the nature of the employment is *co-terminus* with the life of the project, ending with the completion of the work, such employees would not get the benefits which a government employee gets like relief under payment of Gratuity Act, retrenchment benefits or Employees' State Insurance Schemes. They are, but, entitled to the benefits of the provisions contained in the Industrial Disputes Act, 1947.

9. In *State of Rajasthan Vs. Kunji Raman* (supra), the Supreme Court, again, relying upon the decision in case of *Jaswant Singh and Ors. Vs. Union of India and Ors.* (supra) held that a work-charged establishment is materially and qualitatively different from a regular establishment and the employees engaged in a work-charged establishment are recruited differently and have different service conditions. The Supreme Court, therefore, found that a work-charged establishment is a



separate class and no parity could be drawn between a work-charged employee and an employee of a regular establishment.

10. In this context, it would be of utmost importance to refer to the provisions contained in Rules 58, 59 and 61 of the Bihar Pension Rules, 1950.

11. Before extracting the aforesaid Rules, it may be noted that the Bihar Pension Rules, 1950, which was framed for defining the conditions under which pension is earned by service under the Government of Bihar and which also sets-out the manner in which the same would be calculated and paid to the employees, came into force with effect from 20th January, 1950.

12. Rules 58, 59 and 61 of the Bihar Pension Rules, 1950 read as such:-

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

First – The service must be under Government.

Second – The employment must be substantive and permanent.

Third – The service must be paid by Government.



59. The Provincial Government may, however, in the case of service paid from general revenues, even though either or both of conditions (1) and (2) are not fulfilled –

(1) declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension;

(2) in individual cases, and subject to such conditions as it may think fit to impose in each case, direct that service rendered by a Government servant shall count for pension.

61. Service does not qualify unless the Government servant holds substantively a post on a permanent establishment.

13. From a perusal of the aforesaid rules, it becomes clear that for a service to qualify for pension, three ingredients must be satisfied, viz., (i) the service must be under the Government; (ii) the employment must be substantive and permanent and (iii) the service must be paid by the Government. An exception has been carved out under Rule 59 of the Bihar Pension Rules, 1950, which provides that if a service is paid from general revenues and even if the employment is not against substantive and permanent post, the Government may make such employment pensionable.



14. The Bihar Pension Rules, 1950 was analyzed and considered by the Full Bench of Jharkhand High Court in *Ram Prasad Singh and Anr. Vs. The State of Jharkhand and Ors.* [2005 (3) JLR 38] in which, the judgment was delivered on 16.05.2005. Various writ petitions were clubbed together in which the prayers were three pronged, viz., (a) for a direction to the respondents to regularize their service by taking over their services in permanent establishment of the State; (b) to consider their cases for compassionate appointment and (c) for a direction to pay them death-cum-retiral benefits, such as family pension, gratuity, leave encashment, provident fund, group-insurance etc.

15. The following questions were raised before the aforesaid Full Bench of the Jharkhand High Court:-

(a) *Whether a work-charged employee of the State of Jharkhand can claim for consideration of his case for taking over his services in the permanent (regular) establishment? If so, is it applicable only to those, who have been appointed prior to 21st October, 1984 and completed more than five years of service*



in the work-charged establishment or to any work-charged employee, who has completed five years of service in the work-charged establishment and is otherwise eligible and fit, irrespective of a cut-off date of appointment?

(b) Whether a dependant of a deceased work-charged employee can claim consideration of his claim for appointment in the services of the State on compassionate ground in terms of the policy/scheme, framed by the State Government? And

(c) Whether a work-charged employee or his nominee or heir is entitled to the death-cum-retiral benefits, such as, pension/family pension, gratuity, leave encashment, provident fund, group insurance amount etc. to which a temporary government employee is entitled?

16. The Full Bench of the Jharkhand High Court, referred to above, noted that in the erstwhile State of Bihar, there were different nature of establishments, viz., permanent establishments; commonly known as regular establishments; temporary establishments and work-charged establishments, which were primarily to be found in the works department, such as Public Works Department (PWD), Road Construction Department, Building Construction Department, Public Health and



Engineering Department (PHED), Irrigation and Minor Irrigation Department, Rural Engineering Organization etc. The Bench, thereafter, took note of the provisions of the Bihar P.W.D. Code and specially Rule 59 of the same.

17. Rule 59 of the the Bihar P.W.D. Code along with Rules 60, 61 and 62 of the same have been deleted *vide* Memo No. 2676(S) WE dated 15.05.2005.

18. Before the deletion, Rule 59 of the Bihar P.W.D. Code read as follows:-

59. Works establishment will include such establishment as is employed upon the actual execution, as distinct from the general supervision of a specific work or of sub-works of a specific project, or upon the subordinate supervision of departmental labour, stores and machinery in connection with such work or sub-work. When employees borne on the temporary establishment are employed on work of this nature, their pay should, for the time being, be charged direct to works. -----

Note 3 occurring in Rule 59 of the Bihar P.W.D. Code is also being quoted hereinbelow as it has some relevance:-

Note 3.-Posts borne on work-charged establishments which are required



throughout the year for maintenance works, etc., or for a long and indefinite period should be made permanent and included in the permanent establishment with the approval of Government.

19. The State of Bihar vide Finance Department's Memo No. 1344 dated 04th February, 1949 laid down the revised conditions of the service of a work-charged establishment. The memo, referred to above, reads as follows:-

**Subject.- Revised conditions of service of work-charged establishment.*

The existing distinction between work charged establishment temporary and permanent establishment and daily labour as given in th P.W. Code and P.W.D. Accounts Code will be maintained but the conditions of service of work-charged establishment will henceforth be identical with those of temporary Government servants.

The posts in work-charged establishment which are of permanent nature, that is required for 12 months in the year and for long and indefinite period will be made permanent and included in permanent establishment and the men employed on these posts, having year's approved service will be included amongst permanent Government employees. Details in this connection are



being worked out and till this is done the conditions of service applicable to temporary Government servants will apply to all work-charged posts.

[Vide F.D. Memo No. 1344 dated 4.2.1949].

20. In the year 1950, the Government of Bihar also framed a rule under proviso to Article 309 of the Constitution of India, whereby all enactments, rules or orders regulating recruitment and conditions of service of persons appointed under the State, which were enforced immediately before the 26th January, 1950, were declared to be rules as if made under proviso to Article 309 of the Constitution of India (gazetted on 26th April, 1950). The same is being quoted hereinbelow for ready reference:-

"Bihar Gazette

P.T.2(ii)-No.17, dt. 26th April, 1950

*Political and Appointment
Department, Government of Bihar*

*Notification No. 3555-3L-27/50A,
dated 15th April, 1950*

*In exercise of power conferred by
the proviso to Article 309 of the
Constitution of India, the Governor of
Bihar is pleased to make the following
rules, namely:-*

*All enactments, rules and orders,
which are made under any enactment or
otherwise, which regulated the*



recruitment and condition of services of persons appointed through public services and posts in connection with the affairs which are now the affairs of the State of Bihar and which are enforced immediately before the 26th January, 1950, shall until provision is made by or under any act of the State Legislature to regulate such recruitment and conditions of service, be enforced as if they had been made by virtue of the power under the said proviso.

By the order of Governor, Bihar

Sd/- L.P. Singh

Chief Secretary"

(emphasis provided)

21. By virtue of the aforesaid notification, the Bihar Pension Rules, 1950, which existed prior to the aforesaid notification, would be deemed to be a rule framed under Article 309 of the Constitution of India and so would the Finance Department's Memo No. 1344 dated 04th February, 1949, referred to above.

22. The Full Bench of the Jharkhand High Court, thereafter, noted that by virtue of the aforesaid notification dated 26th April, 1950, the members of the work-charged establishments would be governed by the Memo No. 1344 of 04.02.1949 in the absence of any



rules or guidelines in that regard.

23. A reading of Note-3 appended to Rule 59 of the Bihar P.W.D. Code, further clarifies that the members of the work-charged establishments having one year of approved service will be included amongst permanent government employees.

24. The State of Bihar regularized the services of work-charged employees by taking over their services in the permanent (regular) establishments.

25. The argument on behalf of the State of Jharkhand that Memo No. 1344 dated 04th February, 1949 was a temporary scheme and not applicable to those who were appointed subsequently was rejected by the Full Bench in view of the plain language of the guidelines dated 04th February, 1949, which related to the "condition of service" of the members of the work-charged establishments including those who were in service and those who may be appointed in future. The Bench took note of the fact that even some of the resolutions of the Government in the years 1984 and 1990 indicated that a



decision had been taken to take over the services of those work-charged employees, who had completed five years of service in such establishment and appointed prior to 21st October, 1984.

26. Thus, by the aforesaid judgment, the Full Bench of the Jharkhand High Court declared that the conditions of service of the members of work-charged establishment, as laid down and circulated *vide* Finance Department's Memo No. 1344 dated 04th February, 1949, is deemed to be a rule framed under proviso to Article 309 of the Constitution of India having statutory force and since in the aforesaid rule in which there was no cut-off date fixed for consideration of the cases of the work-charged employees for taking over their services in the permanent establishment. However, different departments in the State of Bihar carried on the practice of fixing the minimum period of qualifying service for the take over. The Bench, therefore, gave due credence to the powers of the State Government to fill in the gaps/crevices in the rules by providing cut-off dates and fixing minimum period



of continuous service in a work-charged establishment.

27. In the aforesaid judgment, a reference has been made to the case of *Tulsi Pd. Singh Vs. The State of Bihar and Ors.*, reported in *2001 (3) PLJR 15*, where a work-charged employee who had completed five years of service was held to be entitled to be considered for taking over of his services in the permanent (regular) establishment.

28. So far as the issue of compassionate appointment to the dependants of a deceased of a work-charged employee is concerned, the Full Bench of the Jharkhand High Court held that the decisions rendered in *Smt. Meera Devi Vs. State of Bihar and Ors.*, reported in *2000 (1) PLJR 493*; *Smt. Lali Sinha Vs. State of Bihar and Ors.*, reported in *2003 (1) JLJR 597* and *Smt. Urmila Devi Vs. State of Jharkhand and Ors.*, reported in *2003 (1) J.C.R. 523 (Jhr.)* that the heirs of a deceased work-charged employees were entitled for compassionate appointment was not a good law on the ground that since there was a ban on appointment in the work-charged



establishment since 20th September, 1992 and as the work-charged establishment is temporary in nature, the dependant of a deceased work-charged employee has got no right to claim compassionate appointment.

29. With respect to death-cum-retiral benefits available to the employees of work-charged establishments, the Full Bench of the Jharkhand High Court noted that the erstwhile work-charged establishments of the State of Bihar were initially entitled for contributory provident fund, but later, the same was stopped and the work-charged employees were provided with benefits under the general provident fund scheme as were allowed to the temporary government employees and a new head of "General Provident Fund Work-Charged Establishment" was opened in pursuance to Memo No. F2-4028/70-8774F dated 02nd August, 1970.

30. As per the provisions of Rule 58 of the Bihar P.W.D. Code, the members of temporary establishments have no claim to pension, but are given leave and leave salary as admissible under the Bihar



Service Code Rules. Since, the services of a temporary employee has been made pensionable by way of Rule 59 of the Bihar Pension Rules, 1950, the work-charged employees also, having attained the status of a temporary government servant, were held to be entitled to pension under sub-Rule (1) to Rule 59 of the Bihar Pension Rules, 1950.

31. A reference in this context is also necessarily to be made regarding Memo No. Pen 1024/69/11779 F., dated 12.08.1969, which is being extracted hereinbelow for ready reference:-

59.

State Government decisions.-

1

**Regarding:- Declaration of temporary service of a Government servant who is not confirmed as pensionable.*

Under the existing pension rules, a temporary Government servant if not confirmed in any post, is not entitled to pension unless his services are declared pensionable under rule 59 of the Bihar Pension Rules.

2. *There are a large number of temporary Government servants employed under different schemes which are in existence for the last 15-20 years*



and it will cause hardship to them, if they are not allowed pension after their retirement.

3. The State Government after careful consideration have, therefore, been pleased to decide that, if the service of the temporary or officiating Government servants who is not confirmed in any post is continuous and is more than 15 years, it will be considered as pensionable under rule 59 of the Bihar Pension Rules.

4. These orders will be applicable to Government servants retiring on or after 12 August, 1969.

[Vide Memo No. Pen 1024/69/11779 F., dated 12-08-1969]

32. Thus, on these grounds, the Full Bench of the Jharkhand High Court held in paragraph 17 of the judgment as follows:-

17. I, therefore, hold that :

(i) The work-charged employees, who have completed more than five years of continuous service against one post in the work-charged establishment and otherwise eligible, have a right of consideration of their cases for taking over their services in the permanent (regular) establishment, irrespective of their dates of appointment.

But the work-charged employees, working on daily wages not holding any post, are not so entitled.

(ii) The dependants of work-



charged employees are not entitled to claim appointment on compassionate ground and

(iii) The work-charged employees working against a post, in regular scale of pay, on their retirement and after their death, their heirs/dependants are entitled to claim death-cum-retiral benefits, such as, pension/family pension, gratuity, leave encashment etc., apart from G.P.F. and Group Insurance amount, if otherwise fulfills the requisite qualifying period to earn pension, gratuity and leave encashment.

33. For the purposes of laying bare our mind, we do deem it expedient to at least pinpoint the pitfalls/fallacies as we have perceived in the line of reasoning of the Full Bench of Jharkhand High Court in arriving at such conclusions. Not for a second are we questioning the wisdom of the Full Bench or correctness of the final outcome arrived at by the Full Bench which may ultimately be the same in our judgment, but surely on a different premise.

34. In the notification dated 15th April, 1950, clothing all enactments, rules and orders regulating the recruitment and conditions of service of the employee



of State of Bihar which were enforced immediately before 26th January, 1950 with a status of statutory rule framed under Article 309 of the Constitution of India, a specific statement has been made that until such provision is made by or under any Act of the State Legislature to regulate such recruitment and condition of service, the one which was enforced shall continue as if it had been made by virtue of powers under the said proviso; meaning thereby that if an enactment for a particular purpose, viz., for fixing the conditions of service of an employee has already been framed, then any other circular or order, even though deemed to be covered under the notification dated 15th April, 1950 would be deemed to have been superseded by the specific enactment regarding the same. In this context, it may be noted that the Bihar Pension Rules, 1950 is a specific compendium of rules, defining the conditions under which pension is earned by service under the Government of Bihar and the manner in which it is calculated and paid. It need be emphasized that the aforesaid rules, viz., Bihar Pension Rules, 1950 came into



effect from 20th January, 1950, *i.e.*, about three months prior to the notification of 15th April, 1950, referred to above.

35. Thus, according to the aforesaid notification dated 15th April, 1950, Memo No. 1344 dated 04th February, 1949, contained in the Bihar P.W.D. Code, would stand superseded and pension to whichever kind of employee would be governed by the Bihar Pension Rules, 1950, which do not acknowledge payment of pension to any work-charged employee even under the provisions of Section 59 of the Bihar Pension Rules, 1950, as the wages and allowances of a work-charged employee is not given out of Government revenue, but is dealt with as a cost of the project.

36. The second major area of our difference with the line of reasoning by the Full Bench of the Jharkhand High Court is the logic that pension is payable to a work-charged employee, not by virtue of Bihar Pension Rules, 1950, but by virtue of such work-charged employees being treated as temporary government



servants till any further condition of service of such work-charged employee is framed/formulated. The aforesaid reasoning is not understandable to us as even a temporary government employees gets pension by virtue of the Bihar Pension Rules, 1959 (under Rule 59), subject to the declaration by the Government that such service is also pensionable. It may also be pointed out that the introductory paragraph of the Bihar P.W.D. Code Volume-I clearly states that the Code is intended to define the scope of the administrative and executive functions of the officers of Public Works Department (PWD) and it does not deal with question of pension or leave or allowances, except where the rules governing the same are peculiar to the Public Works Department, nor with detailed procedure, to be followed in connection with Public Works Department Accounts. It further stipulates that the rules relating to pay, allowances, leave and pension etc., as contained in the Bihar Service Code, the Bihar Travelling Allowance Rules and the Bihar Pension Rules, are applicable to the members of the State and subordinate services under the



administrative control of the Public Works Department. The Bihar Financial Rules and the Bihar Treasury Code relating to classes of transaction, which occur in Public Works Department as well as Civil Departments, are binding upon the Public Works Department except in so far as they are supplemented by express provision in this Code or in the Bihar Public Works Account Code.

37. It is also not appreciable to us that the Full Bench of the Jharkhand High Court, after quoting from the *State of Punjab Vs. Kailash Nath*, reported in *1989 (1) SCC 321*, wherein it was held that expression "condition of service" means all those conditions, which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it, in the matters likes pension etc. and such condition of service shall also include the benefits, as may be provided by employer to a person even after his death to his death to his dependents/heirs, such as, family pension, gratuity, leave encashment etc. held that compassionate appointment may not be a condition of



service. While saying so, the Full Bench of the Jharkhand High Court has reiterated that a work-charged employee has no right to continue in service of the State even till his age of superannuation and there is no guarantee of his job which is *co-terminus* with the completion of the work. If this were so, then in our opinion, even the services under a work-charged establishment would not be pensionable.

38. The only difference between a work-charged employee and a temporary employee of the Government is that the wages and allowances of a work-charged employee is not paid out of the Government revenue, but as a cost of the project, thereby creating a different class of employment of such work-charged employees. In that event, if at all it is held that the services rendered by a work-charged employee for a long period entitles him for pensionary benefits and his family for other post-retiral benefits, it would only be by virtue of extending the beneficial provision to such persons and taking into account that even though technically they are employees of a work-charged establishment, but in



practicality, because of the continuance of the project for a indefinite/very long period, their employment partakes of the character of at least a temporary government servant.

39. In the case of *Most. Roopkali Kuer Vs. State of Bihar*, delivered on 25.10.2005 and reported in *2006 (1) PLJR 323*, it was held by the Division Bench, after taking note of the decisions rendered by the Supreme Court in the cases of *State of Rajasthan Vs. Kunji Raman* (supra) and *Jaswant Singh and Ors. Vs. Union of India and Ors.* (supra), that the circulars of 1949, contained in the Bihar P.W.D. Code, were never meant to obliterate the distinction and bridge the gap between regular establishment and the work-charged establishment of the Government. While coming to such conclusion, the Division Bench overruled a single Judge decision in case of *Shambhu Sharan Singh Vs. The State of Bihar and Ors.*, reported in *1998 (3) PLJR 908*, where a direction was given to issue sanction order with respect to retiral benefits payable to a deceased who had completed six years as a work-charged employee before his death



while still in service.

40. A Full Bench of the Patna High Court in case of *Durganand Jha and Ors. Vs. State of Bihar and Ors.*, reported in 2007 (4) PLJR 259, has held as held in paragraphs 14, 15, 16 and 20 as follows:-

14. *Employees of Work Charged Establishment have separate entity and status than that of the regular establishment. Their regularisation/promotion in the regular establishment, therefore, would be wholly without jurisdiction and violative of Articles 14 and 16 of the Constitution.*

15. *There is great difference between Work Charged Establishment and permanent establishment of the State. The permanent establishment has status of permanency and will continue for ever, whereas the Work Charged Establishment is created for a temporary purpose to complete a particular work, for which the establishment has been made.*

16. *Accordingly, a person engaged to discharge the duty of Work Charged Establishment will cease to be an employee no sooner the work of that establishment would come to an end. Obviously, therefore, their rights and status are fundamentally different.*

20. it would be appropriate to mention that concept of



regularisation should not be construed in any manner as the act of the authorities regularising the employees, whose appointments were casual, contractual or on daily wages having sanction of law in consonance with Articles 14 and 16 of the Constitution.

41. There are two other cases decided by the Supreme Court which need special mention, they are (i) *Uttar Haryana Bijli Vitran Nigam Ltd. and Ors. Vs. Surji Devi [(2008) 2 SCC 310]* and (ii) *General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi and Ors. [(2009) 7 SCC 205]*.

42. In the former judgment, Surji Devi, who was the widow of one late Shri Krishna, had sought declaration from the Supreme Court as to whether the family members of a deceased employee, appointed on a work-charged basis, would be entitled to family pension. The husband of aforesaid Surji Devi was appointed on a work-charged basis and while in service he expired. Thereafter, aforesaid Surji Devi was appointed on compassionate ground in the services of Uttar Haryana Bijli Vitran Nigam Ltd. in terms of *ex-gratia* scheme. The



deceased (husband of Surji Devi) was admittedly a member of a contributory provident fund constituted under a scheme. Despite that, aforesaid Surji Devi filed an application for grant of family pension which actually pertain to a different scheme. The services of the husband of Surji Devi was never regularized and the scheme of regularization only came into force after the death of the employee. Since, the claim of family pension was declined by the employer, Surji Devi approached the High Court of Punjab and Haryana. The High Court of Punjab and Haryana allowed her prayer on the ground that family pension would be higher than the amount which she would get under E.P.F. scheme, but subject to the condition that Surji Devi shall refund or have the amount adjusted which she had received towards E.P.F., in case of grant of family pension. The Supreme Court, in the appeal preferred by the employer, came to the conclusion that since the husband of aforesaid Surji Devi was a work-charged employee whose services were never regularized, even though he had worked for eleven years, his wife was



not entitled for grant of any family pension and the same could not have been extended to her merely on the grounds of sentiments and sympathy.

43. In the later case, the issue before the Supreme Court was whether the dependant of a deceased, who was not a permanent or temporary employee of the Government, would be entitled for compassionate appointment. The Supreme Court, after taking note of the judgments delivered in cases of *Workmen Vs. Bhurkunda Colliery of Central Coalfields Ltd.* [(2006) 3 SCC 297] and *State of Haryana Vs. Piara Singh* [(1992) 4 SCC 118] {which has been overruled in the case of *Secretary, State of Karnataka and Ors. Vs. Umadevi (3) and Ors.*;[(2006) 4 SCC 1]}, came to the conclusion that since the services of the deceased employee in that case had not been regularized and that the law with respect to compassionate appointment having been settled in case of *Secretary, State of Karnataka and Ors. Vs. Umadevi (3) and Ors.* (supra), prohibiting any appointment through side door, holding such appointments to be violative of constitutional



scheme of "equality" contained in Articles 14 and 16 of the Constitution of India and other cases with respect to compassionate appointment, viz., *Indian Drugs and Pharmaceuticals Ltd. Vs. Workmen*; (2007) 1 SCC 408; *National Institute of Technology Vs. Niraj Kumar Singh*; (2007) (2) SCC 481) and *I.G. (Karmik) Vs. Prahalad Mani Tripathi*; (2007) 6 SCC 162 as well as *Khagesh Kumar Vs. Inspector General of Registration*; 1995 Supp (4) SCC 182, held that if a deceased employee was a daily-wager, who cannot be treated as a government servant, no scheme of any compassionate appointment would be applicable on his death. The Supreme Court set-aside all such submissions regarding parity and held that all the judgments which took note of the long period of service for extending the beneficial provision of regularization/compassionate appointment are deemed to be overruled by virtue of judgment delivered in case of *Secretary, State of Karnataka and Ors. Vs. Umadevi (3) and Ors.* (supra).

44. It was reiterated by the Supreme Court



that Article 14 of the Constitution of India, which is an *equality* clause, does not apply in a case where it arises out of illegality and grant of appointment on compassionate grounds has its own limitation as it is an exception to the mode of regular appointment.

45. In the case of *The State of Bihar and Anr. Vs. Bhagwan Singh* (supra), the respondent Bhagwan Singh had joined the service under the Executive Engineer Tubwell Division, Gaya in April, 1973 as a daily-wage Choukidar. He was absorbed as a Dirver in the year 1979 in the work-charged establishment and continued to serve in that capacity till attaining the age of 55 years, the age of superannuation. He retired in the year 2002. After his retirement, he was allowed pension on the basis of the services rendered by him from January, 1979 to July 2002, i.e., for more than 23 years. He, therefore, claimed that his earlier services on daily-wage basis from April, 1973 to December, 1978 had also taken to be a pensionable service and pension be calculated on the basis of 29 years of service rendered by the petitioner, adding up the period for which he



worked as a daily-wager. A learned single Judge allowed the writ-petition preferred by aforesaid Bhagwan Singh.

46. On appeal by the State Government, the Division Bench referred the issue to the Full Bench. The Full Bench, therefore, was required to answer whether the services rendered by a government servant on daily-wage basis followed by regularization in service will be considered pensionable under the Bihar Pension Ruls, 1950.

47. The Full Bench, after analyzing Rules 45, 56 and 61 of the Bihar Pension Rules, 1950 was conclusively of the opinion that the period for which Bhagwan Singh (deceased) had served as a daily-wager could not be counted for pension. However, the Full Bench took note of the fact that Bhagwan Singh (dead) had been paid pension for the service rendered by him from 1979 to 2002 in the work-charged establishment and, therefore, he was held not entitled to the relief which was claimed by him.

48. In our respectful opinion, the issue with respect to the question as to whether the services rendered under a work-charged establishment is pensionable or not



has not been answered in the aforesaid case, viz., *The State of Bihar and Anr. Vs. Bhagwan Singh* (supra) by the Full Bench.

49. It also needs to be pointed out at this stage that in *Saraswati Devi Vs. The State of Bihar and Ors.* (supra) as well as in *The State of Bihar and Ors. Vs. Bimli Devi* (supra), in which different opinion was rendered by two different Benches of this Court, the Full Bench judgment rendered in *State of Bihar and Anr. Vs. Bhagwan Singh (since dead)* was not referred to in either of the two Division Bench judgments.

50. In *The State of Bihar and Ors. Vs. Bimli Devi* (supra), in particular, the judgment was delivered only by analyzing Rule 58 of the Bihar Pension Rules, 1950 and no reference was made to Rule 59 thereof. However, it may be noted that in *Saraswati Devi Vs. The State of Bihar and Ors.* (supra), the Division Bench referred to a paragraph quoted in *Harjinder Singh Vs. State Warehousing Corporation [2010 (3) SCC 192]*, wherein it was held that Judges of this Court are not mere phonographic recorders



but are empirical social scientists and the interpreters of the social context in which they work. A beneficial construction has to be given to welfare legislation. The Bench also referred to Article 38 of the Constitution of India, falling in Part-IV thereof, which reads as follows:-

38. State to secure a social order for the promotion of welfare of the people.-(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

51. Some other cases need be referred in this context. A judgment by a single Judge of this Court in the case of *Md. Matin Vs. The State of Bihar and Ors. (C.W.J.C. No. 24532 of 2013)* in which the respondent authorities were directed to accord pension and other post-retiral benefits to a work-charged employee and the challenge to the aforesaid order before the Division Bench in L.P.A. and before the Supreme Court in S.L.A. also failed.

52. In the case of *Meena Kuer Vs. The State of Bihar (L.P.A. No. 1011 of 2016)*, the Division Bench of



the Patna High Court on 23.11.2017, held the judgment in *Saraswati Devi Vs. The State of Bihar and Ors.* (supra) to be *per incurium* on the point and held that the services of a work-charged employee is not pensionable.

53. In *L.P.A. No. 969 of 2015 (Raj Kumar Jha Vs. The State of Bihar and Ors.)* and other analogous case, noting the difference of opinion, a Division Bench of the Patna High Court, comprising the then Chief Justice and Justice Anil Kumar Upadhyay, was also of the view that the issue ought to be resolved by constituting a Larger Bench to decide whether employees working in a work-charged establishment in the State of Bihar are entitled to pension.

54. The upshot of the above discussion, therefore, is that but for the Full Bench decision of the Jharkhand High Court in case of *Ram Prasad Singh and Anr. Vs. The State of Jharkhand and Ors.* (supra), a Division Bench of the Patna High Court in case of *Saraswati Devi Vs. The State of Bihar and Ors.* (supra) and the single Bench judgment in case of *Md. Matin Vs. The State of Bihar and Ors.* (supra), all other judgments clearly spell-out the



distinction between a work-charged establishment and a government employee, permanent or temporary, and has held such work-charged employees to be falling in a separate class without any parity with their counterparts in government service. However, it is noteworthy that the challenge to the aforesaid judgments, viz., *Ram Prasad Singh and Anr. Vs. The State of Jharkhand and Ors.* (supra), *Saraswati Devi Vs. The State of Bihar and Ors.* (supra) and one *Md. Matin Vs. The State of Bihar and Ors.* (supra), S.L.Ps. before the Supreme Court also stand dismissed, though in one of them, on the ground of delay.

55. These various strands of reasoning and the results arrived at in different litigation has made the task of this Full Bench extremely difficult and one would be required to tread a path delicately balancing of the provisions of law, meaningful interpretation of beneficial legislation and the other social welfare constructs.

56. What is troubling this Court is that with several judgments holding out different propositions, some of the widows of the late work-charged employees are enjoying



the family pension and it would appear to be rather queer that many others are or would be deprived of the same, if a strict interpretation is given to the status/nature of a work-charged employee.

57. In this context, it would be relevant for us to refer to the aspect of "equity" relying upon which only, it can be held that the services of a work-charged employee is pensionable in view of Rule 59 of the Bihar Pension Rules, 1950 and Memo of 1949 of the Bihar P.W.D. Code.

58. The other aspects of the matter which afflicts us at this time is that most of the work-charged establishments are being continued in the works department of the Government, which are continuing for a very long period. Some of such work-charged establishments have a kind of permanence with respect to their existence.

59. If the veil over a work-charged establishment is lifted, it would reveal that in actuality, such an organization is a permanent organization. Had it not been the case, the work-charged employees would not have been given regular pay-scales and would have been retained



for several years. In that event, depriving such workmen from the fruits of pension on the technical ground of a work-charged employee not being paid from the government revenues.

60. Getting back to the concept of "equity", *Jill E. Martin*, in his book "Modern Equity" has explained it as a word with many meanings. In a wide sense, it means that which is fair and just, moral and ethical; however, its legal meaning is much narrower. "Equity" is a branch of law, which may not be considered to be synonymous with justice in a broad sense. A person claiming equitable rights/equity has to establish his claim and such rights cannot be invented for the first time.

61. In many countries, where the system of law is well developed, strict rules of law have given way to the principles of equity in order to avoid unwarranted hardship. "Equity", thus, is a body of rules which were evolved to mitigate the severity of the rules of common law. Principles of justice and conscience are the basis of equity jurisdiction.



62. But for the fact that the difference between a temporary Government employee and a work-charged employee has been cast in terms of the source from where they are paid; for all practical and generic purposes, a work-charged employee is a temporary Government employee. Under such circumstances, if strict and doctrinaire approach is avoided for some time, the conclusion arrived will be more in-tune with the principle that if an employee has worked in a work-charged establishment for a long number of years, say ten years, or till he superannuates or dies in harness, he would at least have the status of a temporary employee. More often than not, most of these work-charged establishments are managed and controlled by the State, even though the remunerations to the employees in such organization are drawn as cost to the estimated project.

63. The provisions contained in Rule 59 of the Bihar Pension Rules, 1950 speaks of a class of employees who receive their allowances from general revenues. "General Revenues" has been defined in Bihar Service Code



under Rule 19. It states that the "General Revenues" include all revenues and public money raised or received by the Central and the State Governments and excludes the revenues of local funds. "Local funds" has been defined under Rule 29 of the Bihar Service Code, which reads as hereunder:-

29. Local fund means.-

(a) revenues administered by bodies which by law, or rule having the force of law come under the control of Government, whether in regard to proceeding generally or in regard to specific matter, such as the sanctioning of their budget, sanction to the creation or filling up of particular posts, of the enactment of leave, pension or similar rules; and

(b) the revenues of any body which may be specifically notified as such by the Government of India or the State Government, as the case may be.

64. There would be practically a little or no difference if the contents of Rule 19 and Rule 29 of the Bihar Service Code, more particularly, sub-Clause (a) of Section 29 is analyzed.

65. In the case of *Mrs. Manju Bhatia and Anr.*



Vs. New Delhi Municipal Council and Anr. [AIR 1998 SC 223], the Supreme Court has reiterated that benevolent provisions have to be given liberal construction to fulfill and achieve the intention of the legislature.

66. Any other interpretation would tantamount to nullifying the benevolent provision as if reading the same with a non-benevolent eye and with a mind not tuned with the purpose and philosophy of the legislation without being informed of the true goals which are sought to be achieved.

67. Maxim "*in aequali jure melior est conditio possidentis*" indicates that where equities are equal, law should prevail; if not, then law ought not to be let to lie where it falls. Since a Court of law is also a Court of equity and since the concept of equity may be stranger to tax and revenues but not for social welfare, it would only be a benevolent approach in treating work-charged employees at par with temporary employees of the Government whose services under certain conditions are pensionable.

68. In the case of *State of Punjab and Ors. Vs. Rafiq Masih (Whitewasher) [(2014) 8 SCC 883]*, the



Supreme Court prevented the State Government from recovering excess/unauthorized money given to the petitioners without any fault on their part by pressing the doctrine of equity and holding that the final end of law is justice and so the means to it, should also be informed by equity.

69. *Ab identitate rationis*, it would perforce be necessary for us to bend for adjusting equity so as to mitigate the harshness of the law by blending it with fairness and equity. While doing so, we are only remaining cognizant and conscious of the motive and philosophy of the provision of pension and are continuously keeping in mind, the goal to be achieved in deciding about a service being pensionable. The goal is nothing, but a fortiori recognition of the services rendered by an employee, so that in the evening of his life, he does not have the fall prey to scarcities and in case of his death, his family may not be reduced to impecunious vagrancy.

70. For the aforesaid reasons, we deem it necessary and lawful to hold and declare the following that



till the time, appropriate rules in this regard is framed by the
Government:-

(i) That a work-charged employee who has completed ten (10) or more years of continuous service against one post in the work-charged establishment will be paid pension and his family, in case of death of such work-charged employee, would be paid the family pension.

(ii) The work-charged employees who have received regular scale of pay for ten (10) or more years on their retirement and after their death, their heirs and dependants would be entitled to claim death-cum-retiral benefits.

(iii) However, the dependants of a work-charged employee would not be entitled to claim appointment on compassionate ground in the absence of any scheme framed by the Government for such work-charged establishment.

71. The reference, referred to above, is
answered accordingly.

(Ashutosh Kumar, J.)



(Per : HONOURABLE THE CHIEF JUSTICE)

I have had the benefit of going through the erudite and elaborate judgment of my esteemed Brother Justice Ashutosh Kumar and I entirely agree with his line of reasoning as well as the conclusions drawn for answering the reference. To support and consolidate the same, I would humbly prefer to add some reasons.

2. The basic plea on the basis whereof a work charge employee is claiming pension is in the background of his prolonged continuance in services that are acknowledged in the nature of a substantive requirement. The caption of a work charge employee appears to be a mask to continue the services that were essentially required for long periods. An engagement in a project that was likely to last for a long time, or an engagement in a government establishment for performing the nature of work that is required to be permanently performed in one project after the other, continued to be in vogue in several government departments. It may not be necessary that a work charge employee may be engaged for a project, but continues to be



engaged to perform different works undertaken by the Department. This continuity of employment, not being against a regular post, results in transition of his status from a mere engagement, to an engagement which lasts substantively for a long period. The employee on the basis of such past services claims reckonable emoluments at par with those on the regular rolls and it is here that the constitutional interpretation in the background of Article 14 read with Article 21 and the principles enshrined in Article 39A of the Constitution of India have to be taken notice of. It is correct that a work charge employee does not have guarantee of service but because of the continuance of the availability of the work for an indefinite and a long period the employment does not remain mere fortuitous.

3. There are a line of decisions relating to work charged establishments and engagements therein throwing light on their limited rights and their service conditions which deserve mention. The issue as to whether a person is entitled to claim compassionate appointment being the dependent of a daily wager or work charge



employee was considered by a Full Bench of the Allahabad High Court in the case of **Pawan Kumar Yadav v. State of U.P. & Ors., reported in (2011) 1 AWC 1028, Civil Misc. Writ Petition No. 15505 of 2005**, decided on 22nd September, 2010 wherein it was held that work charge employee who do not hold any post, whether substantive or temporary, and not appointed against any regular vacancy do not fall within the definition of a government servant within the meaning of Rule 2(a) of the U.P. Recruitment of Dependents of Government Servant (Dying in Harness) Rules, 1974 and, therefore, his dependents on his death in harness, are not entitled to compassionate appointment under the said Rules. It may be pointed out that the said Full Bench Judgment followed the judgment of the Apex court in the case of **Uttaranchal Jal Sansthan V. Laxmi Devi & Ors.** reported in **(2009) 7 SCC 2015**.

4. In the wake of the aforesaid pronouncement, the view taken by us as well as by the Full Bench of this High Court in the case of **Ram Prasad Singh & Anr. Vs. State of Jharkhand and Ors.** reported in



2005 (3) JLR 38 narrow down the controversy as it remains no longer *res integra*. Thus, a claim of compassionate appointment by a dependant of a work charge employee dying in harness, does not arise. Further, there are no rules in the present context extending the benefit of compassionate appointment to the dependant of a deceased work charge employee.

5. The Apex Court in the case of **State of Haryana and Anr. vs. Tilak Raj & Ors.** reported in **AIR 2003 SC 2658** held that scale of pay is attached to a definite post and in the case of a daily-wager, he holds no posts. Similarly, in the case of work charge employee, he is not engaged ordinarily against a post nor is he engaged through any regular process.

6. It is for this reason that treating the service of a work charge employee in continuity with his regular services has been a matter of serious debate. This dispute is however dependent upon rules when it comes to computation of the qualifying years of service for grant of pension. A Full Bench of the Allahabad High Court in the



case of **Babu @ Babu Ram vs. State of U.P. and three Ors.** in **Writ-A No. 60352 of 2015** decided on 18th February, 2016 while interpreting regulation 370 of the Civil Services Regulations as applicable in the State of U.P. came to the conclusion that the said rule continues to govern the field and held that the period of service rendered as work charge employee is clearly excluded from the period of regular service. Therefore, it shall not be added towards the period of qualifying service for award of pension.

7. While rendering the said opinion, the Full Bench in the case of **Babu Ram** (supra) noticed the judgment in the case of **Punjab State Electricity Board and Others v. Narata Singh** reported in **(2010) 4 SCC 417**. The said decision had in turn relied on the ratio of the Full Bench decision of the **Punjab & Haryana High Court in the case of Keshar Chand vs. State of Punjab and Others** reported in **AIR 1998 Punjab 265** and it was also noted that Special Leave Petition filed against the said Full Bench decision had been dismissed by the apex court. Under the Punjab Civil Service Rules, Rule 3.17 (ii) did not



allow the counting of work charge establishment services as qualifying service. It is the said Rule that was struck down by the Full Bench of the Punjab & Haryana High Court in the case of **Keshar Chand** (supra) and it is the said decision which came to be approved in the case of **Narata Singh** (supra). The Full Bench distinguished the application of the said judgments on the ground that Regulation 370 of the Civil Services Regulations as applicable in the State of U.P. remained intact and this being a distinguishable feature between the case of **Narata Singh** (supra) and the rule applicable in the State of U.P., the reference before the Full Bench was answered holding that the period of service rendered by a person in work charge establishment in the State of U.P. is not liable to be acknowledged for the purpose of computing qualifying service to enable him to claim pension.

8. The Apex Court in the case of **Habib Khan vs. State of Uttarakhand and Others** being **Civil Appeal No. 10806 of 2017** decided on 23.08.2017 while considering a similar issue in relation to the State of



Uttarakhand followed the judgment in the case of **Narata Singh** (supra) and held that it did not find any room for taking any other view except to hold that the appellants was entitled to count the period of work charge service for the purpose of computation of qualifying service for grant of pension.

9. In another decision of the Supreme Court with regard to casual labourers of the Indian Railways who were granted a temporary status, were held to be not appointed against a post while interpreting the rules of pension involved therein namely the Railway Employee Service Rules, 1993 read with Railway Board Circulars and the Indian Railway Establishment Manual. The apex court came to the conclusion that as per the aforesaid rules a casual worker before obtaining temporary status shall be entitled to reckon 50% of casual service for purpose of pension but such casual workers who were appointed to a post either substantively or in officiating or temporary capacity were entitled to reckon the entire period from the date of taking charge as per the Railway Pension Rules,



1993. The said decision in the case of **Union of India and Ors. vs. Ram Gopal Singh and Ors.** decided on 24th March, 2017 on the basis of the rules applicable, distinguished the case of the Full Bench of the Punjab & Haryana High Court in the case of **Keshar Chand** (supra). It may also be noticed in the said judgment that the Apex Court had noticed a rule of relaxation that was available to the Railway Authorities in that case.

10. In the wake of the aforesaid decisions noticed hereinabove, it appears that there is no express prohibition demonstrated before us for counting such period of service in a work charge establishment as was in the case of Civil Service Regulations applicable in the State of U.P.

11. On the other hand, a rule restricting the said applicability was struck down by the Punjab & Haryana High Court in the case of **Keshar Chand** (supra) which has been followed by **Narata Singh** (supra) and recently in the case arising out of a similar claim in the State of Uttarakhand in the case of **Habib Khan** (supra).

12. I have also come across the order passed



on 1st August, 2018 in Special Leave to Appeal No. 4371 of 2011 where in matters arising out of the law relating to counting of services in a work charge establishment in the State of U.P. is engaging the attention of the Apex Court where after having noticed the law in the case of **Narata Singh** (supra) as followed in the case of **Habib Khan** (supra) the Apex Court opined that the matter needs to be considered by a Larger Bench. The reference before the Larger Bench in the Apex Court is in relation to the Rules as applicable in the State of U.P. In the absence of any such express prohibition under any Rule for the time being in the State of Bihar the present reference can be answered on the basis of the Rules available in this State.

13. Article 309 of the Constitution of India empowers the Legislature to regulate the service conditions of government servants. The scheme of the said Articles, therefore, is that the conditions of service should be regulated by the Legislature and the executive law-making should be resorted to and remain operative only till Legislatures have made such laws. In view of this principle,



the Memo dated 4th of February, 1949 stood superseded and, therefore, I entirely concur with the view of my esteemed Brother Justice Ashutosh Kumar.

14. I am conscious about the rules relating to award of pensionary benefits being dependent upon its applicability to a pensionable post and statutory status depending on the qualifying years of service, but if by carving out a class, only for a differential treatment, in spite of the same nature of work being performed by a work charge employee for a substantively long period as that performed by a regular employee, is precipitated, then the constitutional mandate as referred to above deserves to be invoked. This I say because, entirely agreeing with the view of Brother Justice Ashutosh Kumar, an employee after having put in hard years of continuous unending labour, and his family as well, deserves a secured existence which is nothing else but recognizing the dignity of life as enshrined under Article 21 of the Constitution of India. I am reminded of the weighty observations of Hon'ble Dr. Justice D.Y. Chandrachud in **K.S. Puttaswamy v. Union of India**



reported in **(2017) 10 SCC 1**, paragraph 130 of which is extracted hereinunder:-

"Constitutional interpretation is but a process in achieving justice, liberty and dignity to every citizen."

His Lordship describes the same as one of the pillars of the Constitution in paragraph 318 which is extracted hereinunder:-

"The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian Constitution."

15. In my opinion the conclusions drawn by Hon'ble Brother Justice Ashutosh Kumar are perfectly in line while acknowledging the dignity of the individual, inasmuch as, pension is not a bounty but is a benefit which accrues to the employee on account of his continued hard years of labour and devoted duty. The award of pension, therefore, adds to the dignity of his life and secures it in future. This is in tune with the constitutional goals set out in the Indian Constitution.

16. It has been held by the apex court that



there is no fundamental right to claim appointment on the strength of Article 21, but equality in opportunity is guaranteed under the Constitution. Once a person is engaged, then certain rights do accrue that deserve to be protected.

17. I also agree with the view of Brother Justice Ashutosh Kumar in applying the principles of equity. For this, it may be necessary to point out that the law emanating from the Constitution has its roots in the recognition of certain unalienable rights, one such right is to seek justice on the premise of equality. These principles have stood the test of time and have been in existence since the advent of the Indian Civilization. The development of law in this country is attributable not only to modern jurisprudence but also to the principles of equity, justice and good conscience that have prevailed for centuries together. It is, therefore, our constitutional duty to declare the law and to deliver justice on the above principles. A relief of this nature can be extended by Courts and in spite of certain constraints of law, the Courts are the ultimate authority to



give a meaningful interpretation to the law while extending such relief which includes striking of a balance of competing claims where equity has a major role to play. I am reminded of a recent observation made by an American Judge, Clarence Thomas in **Trump v. Hawaii 2018 SCC Online US SC 28**. Paragraph B of which is extracted hereinunder:-

*"Whether the authority comes from a statute or the Constitution, district court's authority to provide equitable relief is meaningfully constrained. This authority must comply with longstanding **principles of equity that predate this country's founding.**"*

18. It is said that law is good but justice is better. This Court finds ample space in law to accommodate the relief prayed for and prefers to declare the law accordingly.

19. The reference stands answered in the terms already entailed in the judgment of Brother Justice Ashutosh Kumar.

(Amreshwar Pratap Sahi, CJ.)



(Per : HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Thomas Jefferson had once famously remarked that Justice cannot sleep forever. It is in these great words that this Court finds its task cut out.

2. Having gone through the carefully prepared opinions of my esteemed Brother Ashutosh Kumar J., supported whole-heartedly by Hon'ble the Chief Justice, I find that I am in agreement with the reasoning adopted therein, and the conclusion arrived at. In doing so, my learned colleague on the Bench, has based his opinion on an understanding emanating out of the principles of justice, equity and good conscience.

3. The reference to the present Bench has come about due to a myriad of judgments on the issue pertaining to grant of pensions to the employees of work-charged establishments, who had rendered their whole-hearted services for a considerably long period of time, though not in a substantive capacity.

4. It appears that the issues that had been raised in the reference have been carefully detailed, *in se-*



riatim, by our esteemed Brother Ashutosh Kumar J. The complexities which arose out of the judgments that had been rendered *per incuriam*, necessitated a careful retake of the provisions of law which governed and regulated the service of work charge employees, and also each of the judgments rendered in the past, have been tested by him tacitly with reference to various pronouncements by the Hon'ble Supreme Court.

5. It has been conclusively held by him that most of the judgments pronounced earlier were *per incuriam*, since they were on the basis of the assumption that Memo No. 1344, dated 04.02.1949, contained in the Bihar Public Works Department Code, was still operational, and that it is supplemented by Memo No. Pen-1024/69/11779F, dated 12.08.1969. This would mean that work charge employees would be treated at par with temporary employees, and therefore would be entitled to the benefits of Rule 59 of the Bihar Pension Rules, 1950. The case of *Sarasvati Devi (supra)*, decided by a Division Bench of this Court, was based upon this line of reasoning.



This, however, as has been pointed out by my esteemed Brother, is an incorrect reading of the law, as the Bihar Pension Rules, 1950, upon its very commencement, led to the extinguishment of all circulars issued prior to the same. This would mean that the circular became *non est*, and, therefore, such a reading of the two circulars together, with the effect of entitling work charge employees to pensionary benefits, would become impossible.

6. Several pronouncements of the Hon'ble Supreme Court in various cases, such as *State of Rajasthan v Kunji Raman (supra)* and also *Jaswant Singh v Union of India (supra)*, have clearly carved out the distinction between work charge employees and employees of a regular establishment, in terms of the mechanism by which the respective kind of employees are recruited, and the conditions of service imposed upon them. Therefore, it cannot be said that a work charge employee can be treated legally at par, with a temporary employee.

7. It is essential that this Court keeps in mind the very *raison d'être* behind the concept of pension-



ary benefits, which is purely to provide to former loyal employees of the State, who having served dedicatedly and earnestly their entire lives, the means of sustenance so as to not let destitution befall upon them. Grant of pension is in recognition to the labour done in the service of the employer, and in the nature of a benefactor, falling within the realms of socio-economic justice, especially in the context of a modern welfare State.

8. Rule 59 of the Bihar Pension Rules, 1950, is a provision that provides for exceptions to Rule 58 of the same Act. While the latter states clearly as to what would enable an employee of the State to be entitled to the benefits of pension upon his consequent retirement, the former makes arrangements for special exceptions to be carved out by the State Government on the basis of either specific cases, or on the basis of specific classes of employees. As has been pointed out above, the class of employees before this bench, i.e. work charge employees, are not a class of employees who have been afforded the exceptional benefits under Rule 59.



9. Notwithstanding the same, when a Court is faced with a reading of the law, that though unintentionally, will have the effect of making justice more elusive than a reality, then it is the duty of that Court to intervene to prevent injustice to be emanated from the holy grounds of law. Therein, the Court needs to interpret the law, in a manner that makes the law more proximate to justice, by ensuring that the very purpose for which the law was enacted, is pushed towards its realisation, as opposed to its oblivion. The Hon'ble Supreme Court in the case of *CIT v Hindustan Bulk Carriers*, reported at (2003) 3 SCC 57, wherein Justice Pasayat, speaking for the majority has stated,

"15. A Statute is designed to be workable and the interpretation thereof by a Court should be to secure that object, unless crucial omissions or clear direction makes that end unattainable."

10. Work charge employees, working with the State of Bihar, have been in many instances been working for decades, and have been granted regular pay scales by the State Government. Furthermore, they have worked and performed



duties of similar nature, and in several cases, deductions towards Contributory/General Provident Fund have also been made from such work charge employees serving under various different projects in the Works Division of the State Government. It is, therefore, in our considered opinion, necessary that the Court must recognise the prolonged toil of the work charge employees before us, and ensure that benefits of pensions must accrue to them. In doing so, we rely upon principles of equity, justice, and good conscience.

11. The Hon'ble Supreme Court, in the case of *Edukanti Kistamma v S Venkatareddy*, reported in (2010) 1 SCC 765, speaking through Dr. Justice Chauhan, stated,

"For the purpose of interpretation of a statute, the act is to be read in its entirety. The purport and object of the act must be given its full effect by applying the principles of purposive construction. The Court must be strong against any construction which tends to reduce a statute's utility. The provisions of the statute must be construed so as to make it effective and operative, and to further the ends of justice, and not to frustrate the same. The Court has the duty to construe the statute to promote the object of the statute, and serve the purpose



for which it has been enacted, and should not efface its very purpose."

12. If this Court is constrained to follow the *rigor juris*, as apparent from a literal interpretation of the said rules, then surely justice would not be seen to be done, since several individuals who have been drawing pensions in the past, would then be disentitled to do so. Moreover, several others, who in expectation of similar pensionary benefits continued to toil for several years with the Works Establishment, would now be left without an anchor in their old age. This Court is also fully aware that several widows of such work charge employees have been drawing upon such pensionary benefits, and to deprive them of the same would be nothing but to impose destitution and impoverishment upon them. Surely, this cannot be the interpretation that can be afforded to a benevolent legislation such as the Bihar Pension Rules, 1950.

13. In conclusion, therefore, I find myself extending my strong support to the conclusions reached by my esteemed Brother Ashutosh Kumar J., and the points for-



mulated by him towards achieving a just end, and holding in
favour of the work charge employee, for grant of pension
after services rendered to the State Government.

14. The reference is answered accordingly.

(Anjana Mishra, J.)

Praveen-II/Vikash/P.N.M.

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