IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9270 of 2019

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1. Rabindra Kumar Sharan, Son of late Jagdish Lal, Resident of House No.40, Road No.6, East Patel, Patna-800023.
2. Prem Narayan, Son of Sri Mathura Prasad, Jagat Narayan Lal Road, Kadamkuan, Patna-800003.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Department of Finance, Old secretariat, Government of Bihar, Patna.
3. The Agriculture Production Commissioner, Department of Agriculture, New Secretariat, Patna.
4. The Principal Secretary, General administrative Department Old secretariat, Government of Bihar, Patna.
5. The Principal Secretary, Agriculture Department, New secretariat, Patna.
6. The Director, Department of Agriculture, New secretariat, Government of Bihar, Patna-15.
7. The Additional Director, Agronomy, New secretariat, Government of Bihar, Patna-15

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Dilip Kumar, Adv.
For the Respondent/s	:	Mr.Dhurjati Kumar Prasad (GP-14)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 03-02-2020

There are two petitioners, who were earlier working under the Bihar State Agricultural Marketing Board, Patna (hereinafter referred to as 'the Board') established under Section 33-A of Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as 'the Act'). The Act stood repealed with enactment of

Bihar Agricultural Produce Markets (Repeal) Act, 2006 leading to dissolution of the Board.

2. This is not in dispute that in order to accommodate the employees of the Board, a decision was taken at appropriate level for absorption of the employees under the Board and accordingly the petitioners were absorbed in the Directorate of Agriculture as Statistical Assistants. They have retired after attaining the age of superannuation. This is also not in dispute that Bihar Pension Rules, 1950 was applicable for the employees appointed under the State of Bihar before 01.01.2006. Under the new Scheme, employees appointed under the State of Bihar are not entitled for pensionary benefits in accordance with the said Bihar Pension Rules.

3. The petitioners claim that they are entitled for pension in accordance with 1950 Rules because they had come in service of the Board before 01.01.2006 and before the Board was dissolved after enactment of Repeal Act in 2006, the Board of Directors of the Board had taken a decision to extend the benefits of pension to the employees of the Board in accordance with the Bihar Pension Rules.

4. The decision of the Board of Directors has been brought on record by way of Annexure-12 to the Interlocutory

Application filed on behalf of the petitioners (I.A. No. 01 of 2019). The proceedings of the meeting of the Board held on 09.09.2004 (Item No. 6) portrays that in principle in 2001, the Board had taken a decision to allow pensionary benefits to the employees of the Board at par with the employees of the State Government and it was accordingly decided to seek concurrence of the Finance Department, Government of Bihar before placing the matter again before the Board of Directors. However, there was no concurrence accorded by the Administrative Department of the State Government and, therefore, a decision was taken that a last reminder be sent to the State Government for according concurrence and in case no concurrence was received or no objection was raised by the Government, the aforesaid pension scheme, be implemented for the employees of the Board.

5. This is not in dispute that no approval was ever accorded by the State Government to the Board for implementation of pension scheme.

6. Learned counsel appearing on behalf of the petitioners has submitted that the Board being a creation of statute, its decision to grant pensionary benefits to its employees became final the moment a decision to the said effect was taken. He has submitted that no approval at all was required from the State

Government, the Board being itself a statutory body. He has relied on a Division Bench decision of Ranchi Bench of this Court dated 09.03.1990, passed in CWJC No. 2035 of 1989 (R) (Sanjeev Kumar Bimal vs. The Bihar State Agricultural Produce Marketing Board) in support of his plea that approval of the State Government to a decision of the Board to allow pensionary benefits was not required. He has also relied on another decision dated 20.08.1991 in CWJC No. 4966 of 1987 (Bihar State Agricultural Marketing Board employees Association and others vs. Bihar Agricultural Marketing Board and others) wherein the Court had rejected the plea of requirement of approval from Bureau of Public Enterprises in the matter of determining pay-scale of particular category of employees including Accountants, in the service of the Board and revision thereof. Paragraph 7 of the said decision reads thus :-

> *"7. In view of Section 33E and in view of the Judgment of this Court in CWJC No. 2035 of 1989 (8) the stand taken by the Board in the Counter Affidavit that the demand of the petitioners 2 to 5 for revising their scale of pay to Rs. 850-1360 in terms of the recommendation of the 4th Pay Revision Committee could have been referred to the Bureau of Public Enterprises is not correct. In my opinion, the Board is competent enough to decide whether the pay scale of a particular category of employees, including the*

> *Accountants, in the service of the Board, should be revised or not? This decision has to be taken by the Board itself and no prior approval of the State Government will be necessary for that."*

7. He has also relied on another Division Bench decision of this Court in case of ***Krishna Kumar Shrivastava vs. Bihar State Agricultural Marketing Board, Patna and others*** reported in ***1983 PLJR 353*** and with reference to paragraph 5 of the said decision, he has submitted that the petitioners being member of a common cadre, could not have been denied the benefit of pension.

8. Learned State counsel, on the other hand, has relied on a Full Bench decision of this Court in case of ***Harishankar Prasad and others vs. The State of Bihar and others*** reported in ***2018(4) PLJR 889*** to submit that the claim for pension/ pensionary benefits by the employees of the Board, who were absorbed in the service of the State Government after 01.01.2006, is not tenable. He has referred to paragraph-12 of the said decision, which reads as under :-

> *"12. Even otherwise, the concerned employees shall not be entitled to the pension/pensionary benefits for the services rendered by them prior to their absorption with the State Government counting their services rendered by them with the Corporation as there was no pension scheme applicable to the*

> *employees of the Corporation. As observed in above, on humanitarian ground, as the Corporation was facing closure and to see that the concerned employees may not become jobless, a policy decision was taken to appoint/absorb the concerned employees in the State Government. Therefore, if the Corporation wold not have faced the closure, in that case, the concerned employees would have been continued with the Corporation and as such there was no pension scheme applicable, they would not have been given the pension while serving with the Corporation. Therefore, merely because, subsequently, they were absorbed/appointed with the State Government on humanitarian ground, they shall not be entitled to pension/pensionary benefits for the period when they were not governed by the pension scheme while serving with the Corporation."*

9. In my opinion, the legal controversy, which has been attempted to be raised in the present writ application, is no more *res integra*. The Court had occasion to deal with same issue in batch of writ applications including CWJC No. 3582 of 2017 (Mithilesh Kumar and others vs. The State of Bihar and others) and other analogous cases. This Court dealing with various aspects of the matter has held in paragraph 18 of the decision dated 20.11.2018 as under :-

> *"18……... 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 the 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."

10. The Division Bench decision in case of ***Sanjeev Kumar Bimal*** (supra) shall not have any application in the facts and circumstances of the case, as that case related to jurisdiction of the Board to appoint a person against a post. In the present case,

there being direct decision on the point by a coordinate Bench of this Court, I do not find any merit in this application, which is accordingly dismissed.

11. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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