

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.6437 of 2021**

Chandeshwari Devi, wife of late Ram Dayal Paswan, R/o- Village and P.O.-  
Tapri, P.S.- Piar, District- Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Agriculture Production Commissioner, New Secretariat, Government of Bihar, Patna
2. The Special Secretary, Agriculture Department, Government of Bihar, Patna
3. The Vice Chancellor, Rajendra Agriculture University, PUSA, District- Samastipur.
4. The Registrar, Rajendra Agriculture University, PUSA, District- Samastipur.
5. The Comptroller, Rajendra Agriculture University, PUSA, District- Samastipur

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Awadhesh Kumar, Advocate  
For the State : Mr. Sarvesh Kumar Singh, AAG-13  
Mrs. Sunita Kumari, AC to AAG-13  
For the University : Mr. Vijay Shankar Upadhyay, Advocate

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH**  
**ORAL JUDGMENT**

**Date : 26-09-2023**

Heard Mr. Awadhesh Kumar, learned counsel  
appearing on behalf of the petitioner, Mr. Sarvesh Kumar Singh,  
learned AAG-13 appearing on behalf of the State and Mr. Vijay  
Shankar Upadhyay, learned counsel for the Rajendra Agriculture  
University.

2. The poor lady faced with the callous attitude of  
the Rajendra Agriculture University (hereinafter referred to as



‘the University’) has approached this Court in the present writ petition for following relief(s):

***“ 1. That the instant writ application is being filed on behalf of the petitioner above named praying therein for issuance of appropriate writ, rule or direction in the nature of mandamus commanding upon the respondent authorities:***

***i. For granting her the Pension as well as the GPF and the other retiral benefits as per the University Gratuity Provident Fund – cum – Pension scheme, which accrued in favour of the husband of the petitioner namely Late Ram Dayal Paswan, having fallen due from the date of his death i.e. 06.03.2009, while he was still in service;***

***ii. For directing the respondent authorities to communicate the decision regarding the inclusion of the petitioner’s husband name under University Gratuity Provident Fund – cum – Pension Scheme to which the husband of the petitioner was entitled in terms of the Office Order dated 21.02.2008 issued by the Comptroller, Rajendra Agriculture University, PUSA, and***

***iii. For any other relief / reliefs, as may deem fit and proper, in the facts and circumstances of the case.”***

3. The husband of the petitioner, namely, Late Rama Dayal Paswan was initially appointed as Mason in Indian Council for Medical Research( Bio- Gas Scheme) in Rajendra Agriculture University, PUSA on 08.06.1989 (Annexure 1) subject to condition that his service would be liable to be terminated with expiry of the scheme on 31.03.1990. After completion of the aforesaid scheme, the service of petitioner’s husband was absorbed in Krishi Vigyan Kendra, Khodawanpur,



Begusarai on the post of Farm Attendant w.e.f 01.04.1995 vide Memo No. 612 dated 17.06.1995 (Annexure 2).

4. In conformity with the Paragraph 16 of RAU Statutes, Rajendra Agriculture University Letter No. 1760 dated 25.06.1990 and Office Order No. 656 dated 01.08.1996, an Office Order was issued under the signature of the Controller vide Memo No. 3376 dated 30.12.1996, whereby the option exercised under the Triple Benefit Scheme by the employees of the University was accepted subject to differing conditions for those who had earlier opted for either the CPF or the CPF-cum-Gratuity.

5. Subsequent to above, an Office Order No.866 dated 21.02.2008 was issued, whereby the employees of the University were granted one month time from the date of issuance of the said order, to exercise their option under the Triple Benefit Scheme and in terms of Clause-4 of the said order, which contains that in the event of failure to exercise any option within the stipulated time period by the employee concerned, such employee shall be transferred to the Pension Scheme (Annexure 4).

6. In light of the notification dated 21.02.2008, petitioner's husband along with three other employees,



submitted their application on 09.04.2008, in clear and unambiguous terms opting to be transferred to the Pension Scheme (Annexure 5). These applications were forwarded by the Programme Coordinator to the Controller RAU, Bihar, PUSA vide Letter dated 15.04.2008 (Annexure 5 & 5/1). However, only the application submitted by one of three employees, namely Shri Sambhu Rai-Jeep Driver, was considered for transfer to Pension Scheme and the rest of the applications, including that of petitioner's husband was kept pending. The husband of petitioner died on 06.03.2009, while still in the service of the University.

7. Learned counsel appearing on behalf of the petitioner submitted that the claim of the petitioner has not been considered till date nor it has been rejected.

8. The petitioner, in support of her claim, has relied upon the order/judgment dated 10.12.2012, of this Court passed in ***CWJC No. 2041 of 2012 (Arjun Kumar v. the State of Bihar & Ors.)*** The reliefs as prayed for in paragraph no. 1 of the writ petition is reproduced hereinafter:

***“ The petitioner seeks a direction on the respondents to grant him pension as well as G.P.F. and other post retiral benefits which have fallen due with effect from 1.11.2011 on his retirement from 31.10.2011. The writ petition was filed on 16.1.2012. However, during the pendency of the writ application***



***by Resolution No. 3660 dated 13.7.2012 of the Government of Bihar in Agriculture Department the retirement age of the teachers/scientists of Rajendra Agriculture University, Pusa, Samastipur and the Bihar Agriculture University, Sabour, Bhagalpur has been raised from 62 years to 65 years with effect from 30.6.2010. Consequently the petitioner continues to be in the service of the Bihar Agriculture University upon bifurcation of the Rajendra Agriculture University. The further prayer of the petitioner is to quash the order dated 30.10.2007 of the Special Secretary, Agriculture Department, Government of Bihar as also to quash the office order dated 23.11.2011 passed by the Controller, Rajendra Agriculture University pursuant to the direction of this Court by order dated 20.6.2011 passed in CWJC No. 15133 of 2010.”***

9. Learned counsel further submits that the stand taken by Respondent No. 3 to 5, in paragraph no. 15 is contrary to the clarification made by the co-ordinate Bench of this Court in ***CWJC No. 2041 of 2012 (Arjun Kumar v. the State of Bihar & Ors.)***. The respondents have specifically stated in paragraph 15 that on submission of application by the petitioner, the University shall pay all dues under CPF Scheme. The fact that despite the delay in submission of the application by the petitioner's husband dated 09.04.2008, he cannot be denied the benefit of the Pension Scheme in view of Clause 4 of the Office Order No.866 dated 21.02.2008 and Clause 16.1 of Statutes of the University.

10. Learned counsel in support of the claim



submitted that the office order dated 21.02.2008 with respect to the option for remaining in Contributory Pension Scheme contained in Memo No. 866 dated 31.02.2008 issued by the University was subject matter before this Court in **CWJC No. 2041 of 2012**. In order/judgment dated 10.12.2012, a co-ordinate Bench of this Court after taking note of the claim of the said writ petition, which is identical to the claim of the petitioner in the present writ petition has been pleased to pass following observation which *inter alia* is reproduced hereinafter:

*“It is admitted by learned counsel for the University that from a bare reading of Clause 16.1 of the Statutes it is evident that no option was required so far as getting the benefit of pension is concerned.*

*Learned counsel for the State has not made any specific submission on the question of application of the Statutes except to refer to the letter dated 4.9.2012 of the Agriculture Department. However, in the counter affidavit filed on behalf of the State it is clearly stated that for availing the benefit of the Scheme 90 days was granted to submit the option if any, otherwise the employee will be entitled to GPF-cum-Pension-cum-Gratuity Scheme.*

*Before considering the submissions of learned counsels for the parties it would be appropriate to refer to Clause 16.1 of Chapter XVI of the Rajendra Agriculture University Statutes which is in the following terms :*

*“16.1(a) In accordance with item no. (10) of section 35 of the Act, the scheme for pensions, general provident fund and Contributory Provident Fund for the benefit of the officers, teachers and other employees of the University*



*shall be as mentioned in this chapter.*

*(b) The University employees shall be allowed the benefit of pension as below :-*

*(i) Employees as have been appointed by the*

*University will be entitled to the pension provided they do not opt for subscribing to the Contributory Provident Fund.*

*(ii) Temporary Govt. Servants as have been transferred and absorbed in the University service will be entitled to the benefit of pension in which case the temporary services rendered by them in the regular establishment of Govt. will be taken into account for the purpose of calculating pension.*

*(iii) Permanent Govt. servants as are eligible for proportionate pension from Govt. will be allowed on absorption under the University the benefit of Contributory Provident Fund or in lieu thereof pension if they so chose on the basis of total period of service rendered under the Govt. and the University.*

*The pension to which such employees will be entitled would be the pension that would accrue to them on the basis of the total period of service under the Govt. and the University minus the pension payable by Government.*

*(c) The pensionary entitlements of the University employees will accrue on their attaining the age of superannuation under the University or to their families in the event of death and will comprise at the following:-*

*(i) Monthly Pension or terminal gratuity*

*(ii) Death-cum-retirement gratuity*

*(iii) Family Pension*



*The above benefits shall be allowed by the University in accordance with the general rules, under the State Government.*

*Provided that the terminal gratuity and Death-cum-retirement gratuity will be admissible as shown in the Schedule attached at the end of this Chapter.*

*(d) Pension Fund:-*

*The University shall maintain a pension fund for payment of pension and operate the same as per regulation prescribed.*

*(e) General Provident Fund:*

*The University shall allow the benefit of the General Provident Fund to such employees as are not admitted to the Contributory Provident Fund. The General Provident fund of the University will be governed by the rules and orders of the State Government.”*

*It is evident from the narration of facts that earlier as per un-amended Statutes, 1976 the only provision was with respect to CPF for all the employees of the University. However, by the amendment to Clause 16.1 of the Statutes as per Notification No. 1685 dated 17.4.1979 the scheme for pension was introduced in the University along with benefit of gratuity and G.P.F. The Statutes were very clear that all employees appointed by the University would be entitled to pension except those who have opted for subscribing for CPF. There is nothing ambiguous regarding the said point in the Statutes. In the said circumstances, it was futile action on the part of the University that they have repeatedly sought for exercise of option with respect to employees of the University who have not got the benefit of pension scheme. As a matter of fact, the option was to be exercised only by those who wanted to be in the CPF scheme.*



*From the facts and materials on the record it is the clear stand of the petitioner that he never exercised the option for CPF which fact could not be contradicted by the University by producing anything to show that the petitioner had opted for CPF. The only conclusion, therefore, is that in terms of Clause 16.1 of the Statutes the petitioner would be entitled to benefit of pension.*

*That being the position, the order dated 23.11.2011 passed by the Controller of the University by order of the Vice-Chancellor is clearly contrary to the Statutes of the University and there was no occasion to deny the benefit of the triple benefit scheme, i.e., pension, G.P.F. and gratuity to the petitioner on the ground that the so-called option of the petitioner was received through the Associate Dean-cum-Principal, Bihar Agricultural College, Sabour belatedly on 7.5.2008 after one and a half months of the time granted for exercise of option by office order dated 21.2.2008. There was further no occasion for seeking any direction from the State Government to invite last option for triple benefit scheme from the employees of the University at least with respect to those who had never exercised the option in favour of CPF. The said order dated 23.11.2011 is, accordingly, quashed.”*

11. In above background, learned counsel further submitted that the judgment passed in CWJC No. 13260 of 2012, which has been brought on record along with the counter affidavit filed on behalf of respondents no. 3 to 5 (university authorities) by way of ‘Annexure-B/R’ at page no. 51, is *per incuriam* and the same will have no binding effect. In ***CWJC No. 13260 of 2012 (Mukesh Prasad Singh v. Rajendra Agricultural University & Ors.)***, a co-ordinate Bench of this



Court vide order dated 27.02.2019 has been pleased to deny the benefits under the Pension Scheme to the concerned writ petitioner on the ground of delay in submitting his application for choosing his option within the given time period. The claim of the petitioner being similar is fit to be rejected. A specific statement has been made in paragraph nos. 3 to 5, which is as follows:

*“ 3. That it is humbly submitted on behalf of the answering respondent that the then Rajendra Agricultural University, Pusa was established under Rajendra Agricultural University Act 1971 latter on repealed by Bihar Agricultural University Act, 1986 through which the Rajendra Agricultural University was established was repealed by the Government of Bihar vide notification no. 164 dated 17<sup>th</sup> August, 2016 (Published in Bihar Gazette) Bihar Act. Rajendra Agricultural University was created by Dr. Rajendra Prasad Central Agricultural University act 2016 on 07.10.2016 all the matters pertaining to Rajendra Agricultural University shall be dealt as per provisions made in the M.O.U. signed between the Government of Bihar and Government of India*

*4. That the husband of petitioner was initially appointed as masion in Biogas scheme of the then Rajendra Agricultural University (RAU) on 18<sup>th</sup> June 1989 with condition that service of the husband of the Petitioner will be liable to be terminated with expiry of the scheme i.e. 31.03.1990. After completion of 1 year the petitioner's husband started contributing to C.P.F scheme of the University. After completion and termination of Biogas Project the service of petitioner's husband was adjusted in Krishi Vigyan Kendra (i.e. KVK) Khudabandpur as filed attendant in the pay scale of Rs. 775-1025 with effect from 01.04.1995. Since then deceased husband of*



*petitioner was working on KVK, Khudabandpur and contributing in the C.P.F. scheme. AS he was under contributory provident scheme, so on above facts is/was not entitled for pensionary benefit i.e. G.P.F. of the University.*

*5. That vide office order no. 866 dated 21.02.2008 the respondent University (R.A.U.) invited option from their employees under Triple Benefit Scheme within a period of one month i.e. 21.03.2008. The petitioner's husband submitted his option for pensionary benefit (U.G.P.F) through the programme Co-ordinator, K.V.K., Khudabandpur on 09.04.2008. The Programme Co-ordinator, Khodabandpur forwarded the option papers of petitioner's husband alongwith other three employees of the aforesaid KVK to the Comptroller, RAU, Pusa i.e. Head quarter on 15.04.2008 after expiry of last date of receiving option. So his option was not received within stipulated period the restore his name was not considered for UGPS Scheme of the University."*

12. Learned counsel submitted that earlier order of this Court in **CWJC No. 2041 of 2012 (Arjun Kumar v. The State of Bihar & Ors.)**, passed by a co-ordinate Bench of this Court would have binding effect and the petitioner is entitled for consideration of her case in light of the order/judgment dated 10.12.2012. He further submitted that the co-ordinate Bench in CWJC No. 13260 of 2012, by not considering the earlier order passed by this Court will be held to be *per incuriam* and the same will have no binding effect.

13. Learned counsel reiterating the claim of the petitioner of **CWJC No. 2377 of 2006 (Ramjanam Prasad v.**



**Rajendra Agricultural Univeristy & Ors.),** in which, vide order/judgment dated 13.02.208, the relief claimed for in the present writ petition relating to employee of the Rajendra Agricultural University now named as Dr. Rajendra Prasad Central Agricultural University, Pusa have been granted. He has referred paragraph nos. 7 and 8 of the order/judgment passed in CWJC No. 2377 of 2006, which is reproduced for the purpose of deciding the present writ petition:

*“7. Having considered the rival contentions, the Court finds that the petitioner is entitled to the relief claimed by him. The State being the paymaster, no financial liability can be created without its consent. In terms thereof, the State had amended the relevant statute in the year 1979 and 1983, which provided for calling for option as a one time measure within 90 days. The same also provided for the situation where the person not opting for any particular scheme would automatically be placed in the pension-cum-gratuity category. Once it is admitted that the petitioner had not opted for any of the options in terms of the 1979 and 1983 amendments to the statute, within the stipulated period, the petitioner automatically stood in the category of those who were to be given pension-cum-gratuity...*

*8. For the reasons aforesaid, the writ petition stands allowed. The petitioner is held entitled to benefit under the pension-cum-gratuity scheme. The authorities are directed to work out the figures and also the amount which the petitioner has taken under the C.P.F. scheme. The same shall be returned by him to the University, along with the interest as calculated by the University, within two months from the date of the University intimating him the amount. The payment under the pension-cum-gratuity shall be*



***made to him thereafter within the next two months.”***

14. *Per contra*, learned counsel appearing on behalf of the University has reiterated the statement, which has been made in the counter affidavit filed on behalf of the respondents no. 3 to 5. The counter affidavit starts with detailed background of the case as stated in paragraph no. 4, which contains details of the establishment of the university and its object. It also gives the brief facts that the husband of the petitioner was initially appointed as mason in Biogas scheme of the then Rajendra Agricultural University (RAU) on 18<sup>th</sup> June, 1989, with a condition that the service of the husband of the petitioner will be liable to be terminated with expiry of the scheme on 31.03.1990. After completion of one year, the husband of the petitioner had started contributing to C.P.F. scheme of the University and, thereafter, his services was adjusted in Krishi Vigyan Kendra (K.V.K.), Khudabandpur as field attendant in the pay scale of Rs. 775-1025/- with effect from 01.04.1995. Since then the husband of the petitioner was working in Krishi Vigyan Kendra (K.V.K.) and regularly contributed in C.P.F. Scheme. A specific statement has been made in the said paragraph that “*As he was under Contributory Provident Fund Scheme, so on above facts he is/was not entitled for pensionary benefit i.e. G.P.F. of the*



*University*". However, reason for rejection of petitioner's husband application dated 09.04.2008 , relates to the fact that the husband of the petitioner had submitted his application opting for Pension Scheme (U.G.P.F.) through the Programme Co-ordinator, K.V.K., Khudabandpur on 09.04.2008, which reached the Headquarters after expiry of last date of receiving option i.e 21.03.2008. In those background, it has been stated that no discrimination has been done to the petitioner by the university in considering the option of the husband of the petitioner *vis-a-vis* other employees whose option were received after the cutoff date, could not be considered.

15. In support of the above stand respondents forwarding the benefit of 'Triple Pension Scheme' specific statements have been made in paragraphs no. 10 and 11 that in similar cases with respect to the employees namely, M.P. Singh (Programme Co-ordinator), Sri Shambhu Rai (Jeep Driver) and Md. Mumtaz Alam (Peon) were forwarded by the Programme Co-ordinator, K.V.K. on 15.04.2008 to the Comptroller, Rajendra Agricultural University, Pusa but due to late receiving of application of aforesaid employees along with petitioner's husband, the same was not considered by the University. Similar statement has been made in paragraph no. 15 with



respect to denying the claim of the petitioner. However, liberty has been given that the petitioner who is the widow of deceased employee may submit her application for payment under C.P.F. scheme and the university shall pay all dues under C.P.F. scheme without any delay and as early as possible.

16. Ms. Sunita, learned counsel appearing on behalf of the State has referred to paragraph no. 9, 10 and 11 of the counter affidavit filed on behalf of the respondents no. 1 and 2, to support the stand taken by the university wherein, similar facts have been reiterated in paragraphs no. 9, 10 and 11 and it has been stated that the claim of the petitioner for 'Triple Benefit Scheme' is fit to be rejected.

17. Heard the parties.

18. The issue which falls for the consideration before this Court is whether the petitioner's case would be covered by order dated 10.12.2012 passed in CWJC No. 2041 of 2012 and order dated 13.02.2018 passed in CWJC No. 2377 of 2006 and in consequence, whether she would be entitled for the relief(s) claimed in the present writ petition, taking into considering the statute of Rajendra Agricultural University with respect to Clause-16.1 of Chapter-XVI or the claim of the petitioner is fit to be rejected in light of order dated 27.07.2019



passed in CWJC No. 13260 of 2012.

19. The admitted facts are that the husband of the petitioner had died on 06.03.2009 in harness and the pensionary benefits as claimed for by the petitioner has not been paid to the petitioner, who is the wife of the deceased employee. The petitioner, who is an illiterate and elderly woman, is faced with the inaction of the University authorities, which has forced her to file the present writ petition in the year 2021 and same has remained pending till date. The Apex Court in case of ***D.S. Nakara & Others Vs. Union of India reported in (1983) 1 SCC 305*** and subsequent judgment has held that pension is not a bounty rather a right and it is a property under Article 300 (A) of the Constitution of India. The University came out with order no. 866 dated 21.02.2008 and as per its Clause-4, despite the delay in submission of the application dated 09.04.2008 within the stipulated cut off date i.e. 21.03.2008. A co-ordinate Bench of this Court in ***CWJC No. 2041 of 2012, Arjun Kumar (supra)***, in similar circumstances, has allowed the claim of the writ petitioner of the said case, considering the fact that subsequent amendment took place in Clause-16.1 of the Statute of the University. The scheme of pension was introduced in the University along with the benefit of Gratuity and C.P.F. The



Statute is very clear that all the employees of the University are entitled to pension except those who have opted for subscribing to the C.P.F. scheme. Hence, in terms of Clause-16.1 of the Statute, the husband of the petitioner, who had explicitly showed his willingness and intention to be transferred to the Pension Scheme vide his Letter dated 09.04.2008, was entitled to the benefit of pension. To this effect observation/decision has been made in the judgment dated 10.12.2012 have already been reproduced in preceding paragraph of this order.

20. I have further considered the order passed by a co-ordinate Bench of this Court in ***CWJC No. 13260 of 2012, Mukesh Prasad Singh (supra)*** in which vide order dated 27.02.2019 following observation has been made in paragraph no. 5:

***“ 5. I have heard the learned counsel for the parties and I find that the petitioner has not controverted the statements made by the Respondent No. 5 and by the Deputy Registrar, Rajendra Agricultural University, Pusa in their counter affidavit regarding the petitioner having not opted for pension cum gratuity cum G.P.F. scheme either in the year 1990 or 1995 or 1996 or in the year 2008 as well as regarding him not submitting his option in time, hence, no benefit can be extended to the petitioner.***

***6. For the reasons mentioned hereinabove, I do not find any merit in the present case, hence, the writ petition is dismissed.”***

21. I do not find the case of the petitioner can be appreciated in similar manner. The claim of the petitioner is



squarely covered by the judgment dated 10.12.2012 passed in CWJC No. 2041 of 2012, *Arjun Kumar (supra)* and judgment dated 13.02.2018 passed in *CWJC No. 2377 of 2006, Ramjanam Prasad (supra)*, which have been passed prior to the judgment dated 27.02.2019 passed in *CWJC No. 13260 of 2012, Mukesh Prasad Singh (supra)*. The coordinate bench in CWJC No. 2041 of 2012, has taken due consideration of the amendment to Clause 16.1 of Chapter XVI of the Rajendra Agriculture University Statutes as per Notification No.1685 dated 17.04.1979, which clearly provides that all employees appointed by the University would be entitled to pension except those who have opted for subscribing for CPF. However, the judgment passed in *CWJC No. 13260 of 2012*, has failed to take note of the amendment to Clause 16.1 of Chapter XVI of the Statutes. For the aforesaid reasons, the order dated 27.02.2019 passed by a co-ordinate Bench of this Court in CWJC No. 13260 of 2012, does not have binding effect. As such, the statement made in counter affidavit to reject the claim of the petitioner is hereby set aside and rejected in terms of the observations made hereinabove and law laid down by the co-ordinate Bench of this Court in CWJC No. 2041 of 2012, *Arjun Kumar (supra)*.

22. The petitioner's husband ought to have been



given the pensionary benefits under U.G.P.F. Scheme. The respondent authorities have admitted to have received the application of the petitioner's husband seeking transfer from C.P.F. to U.G.P.F. scheme, which was forwarded to the Comptroller, R.A.U., Pusa by the Programme Co-ordinator of the Krishi Vigyan Kendra, Khodabandpur. The State had amended the relevant statute in the year 1979 and 1983, which provided for calling for option as a one time measure within 90 days. The same also provided for the situation where the person not opting for any particular scheme would automatically be placed in the pension-cum-gratuity category. Once it is admitted that the petitioner had not opted for any of the options in terms of the 1979 and 1983 amendments to the statute, within the stipulated period, the petitioner automatically stood in the category of those who were to be given pension-cum-gratuity. The later extension of the date for giving the option, by a decision of the Board of Management, is clearly beyond jurisdiction as the Board of Management could not have created any financial liability on the State Government without its prior approval and, thus, to such extent, the said permission extending the date for giving option cannot held to be valid in the eyes of law. Once the petitioner had opted in terms of such decision of



the Board of Management, which this Court has held to be without jurisdiction, the same becomes irrelevant. At the cost of repetition, the petitioner not having opted in the initial round, pursuant to the amendment brought in the relevant statute in the years 1979 and 1983, it shall be deemed in law that the petitioner has opted for the pension-cum-gratuity scheme. In the present case, the petitioner admittedly had not applied either in 1979 or 1983, and, thus, it has to be held that in law he is entitled to pension-cum-gratuity.

23. In my considered view, the earlier judgment dated 10.12.2012 passed in (***CWJC No. 2041 of 2012***) ***Arjun Kumar (supra)*** will have a binding force, as the subsequent judgment dated 27.02.2019, passed by co-ordinate Bench of this Court in (***CWJC No. 13260 of 2012***) ***Mukesh Prasad Singh (supra)*** being *per incuriam* and the same will have no binding effect. The law in this regard is no more res integra.

24. The term *per incuriam* literally means "through the lack of care". The doctrine of *per incuriam* as an exception to the doctrine of stare decisis was discussed at length by Lord Green M.R. in the case of ***Young v. Bristol Aeroplane Company***, wherein it was observed:

*"The Court is not bound to follow a decision of its own if it is satisfied that the decision*



*was given per incuriam, for example, where a statute or Rule having statutory effect which would have effected the decision was not brought to the attention of the earlier Court".*

25. In Indian jurisprudence on the doctrine of precedent has also accepted *per incuriam* as a valid exception to the principle of *stare decisis*. The only cases in which decisions should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority.

26. In case of ***State of U.P. v. Synthetics and Chemicals Ltd. [(1991) 4 SCC 139]*** the Hon'ble Supreme Court observed in paragraph 40 as follows:-

***"40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd.) [Young v. Bristol Aeroplane Co. Ltd., 1944 KB 718 at 729 : (1944) 2 All ER 293 at 300. In Huddersfield Police Authority v. Watson, 1947 KB 842 : (1947) 2 All ER 193.] Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law."***

27. The petitioner is accordingly entitled for benefit of the 'Triple Pension Benefit Scheme' i.e. Pension, G.P.F. and



Gratuity and other terminal benefits to which the petitioner is entitled for in accordance with law.

28. Accordingly, the present writ petition is allowed.

29. There shall be no order as to costs.

**(Purnendu Singh, J)**

Niraj/-

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