IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7400 of 2023

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Mukhlal Ojha S/O- Sri Yadunandan Ojha R/o- C-1, Block B, Aparajit Gaain Apartment,PO- Ashiyana Phulwari, Patna, Bihar-800025

... ... Petitioner/s

Versus

1. State of Jharkhand through Secretary, Ministry of Agriculture, Animal Husbandry and Co-operative Department, Nepal House Doranda, Ranchi, Jharkhand-834002.
2. The Registrar, Co-operative Societies 3rd Floor, Pashupalan and Sahkarita Bhawan Hesag, Hatia, Ranchi- 834003.
3. The Accountant General (A and E) Office of Accountant General (A and E), Jharkhand PO- Doranda, Ranchi-834003
4. Manager, CPPC State Bank of India, 4th Floor, Z O J C Road Patna, Bihar-800001
5. State of Bihar Through Secretary, Co-operative Department. 2nd Floor, Vikas Bhawan New Secretariat, Patna- 800015.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 5003 of 2022

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Nand Kishor Singh, S/o Kisundev Dev Singh, Resident of Ward NO. 10, Village and P.O.-Bikrampur, Via-Siripur, Block-Cheria Bariarpur, District-Begusarai.

... ... 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, Government of Bihar, Old Secretariat, Patna.
3. The Secretary (Finance), Department of Finance, Government of Bihar, Old Secretariat, Patna.
4. The Accountant General (A and E) Bihar, Veerchand Patel Path, Patna.

5. The Treasury Officer, Begusarai, District-Begusarai.
6. The State Bank of India, through the General Manager, State Bank of India, Centralised Pension Processing Center, 4th Floor, Administrative Office, Judges Court Road, Patna.

... ... Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 7400 of 2023)

For the Petitioner/s	:	Mr. Ram Prakash Kumar, Advocate Mr. Dheeraj Kumar, Advocate
For the Respondent/s	:	Mr. Uday Shankar Sharan Singh, GP-19
For the S.B.I.	:	Mr. Amish Ranjan, Advocate Mr. Rajan Prakash, Advoate Mr. Prabhakar Thakur, Advocate
For the State of Jharkhand	:	Mr. Sanjay Kumar Pandey, Advocate

(In Civil Writ Jurisdiction Case No. 5003 of 2022)

For the Petitioner/s	:	Mr. Avanindra Kumar Jha, Advocate
For the Respondent/s	:	Mr. Sushil Kumar Singh, AC to AAG-10 Mr. Rohitab Das, AC to AAG-13
For the S.B.I.	:	Mr. Amish Ranjan, Advocate Mr. Rajan Prakash, Advoate
For the Accountant General	:	Mr. Binod Kumar Labh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

CAV JUDGMENT

Date : 22-12-2023

The issue involved in both the writ petitions is identical and, as such, the same are being heard together and disposed of by this common order.

2. The petitioner in CWJC No. 7400 of 2023, who superannuated from the office of District Co-operatvie Officer, Deoghar, Jharkhand on 31.08.1995 has filed the present writ petition seeking a direction upon the respondents to correctly implement the letter F No. 38/37/08-P&PW(A) dated 02nd September, 2008 of Government of India, whereby, the petitioner is entitled for enhanced rate of pension from the beginning of 80 years of age and further from beginning of 85

years of age, instead of completion of 80 years of age and 85 years of age.

3. The petitioner in CWJC No. 5003 of 2022, who is a retired employee of Bihar Education Service, superannuated on 31.12.1994 from the post of Area Education Officer, Cheriabariarpur, Begusarai has filed the present writ petition to hold and declare that in view of the provisions as contained in Resolution of the State Government of Bihar, published vide Gazette (Extra Ordinary) No. 489 dated 23rd September, 2009 issued in consonance with the rules made for revision of pension of the Central Government employees vide Letter No. 38/37/08-P & PW(A) dated 01st September, 2008, the petitioner is entitled for being paid the enhanced pension i.e. additional 20 per cent of Basic Pension with effect from the date he enters in to the 80th years and an additional 30 per cent of Basic Pension with effect from the date he enters in to the 85th years and accordingly, pay the consequential benefits.

4. From the materials available on record and the reliefs sought for by the petitioners, the only question posed before this Court is with regard to the entitlement of the petitioners for an effective date of enhanced rate of pension in terms of the Resolution issued by the Government of India,

Ministry of Personal, Public Grievance and Pensions, Department of Pension and Pensioners' Welfare as well as the Resolution of the Government of Bihar, Finance Department published vide Gazette Notification dated 23rd September, 2009 as to whether it would be the date from the beginning of 80 years, 85 years, 90 years and 100 years or after completion of 80 years, 85 years, 90 years, 95 years and 100 years.

5. Before coming to the issue involved in the writ petition, a preliminary objection has been made with regard to the maintainability of the writ petition bearing CWJC No. 7400 of 2023, on account of having no territorial jurisdiction, as the petitioner was the employee of Jharkhand State, superannuated from the office of District Co-operative Officer, Deoghar and had already issued PPO No. 254438 dated 07.11.1996 by the Accountant General (A & E), Jharkhand, Doranda, Ranchi.

6. In response to the preliminary objection, it is submitted that though the petitioner superannuated from the State of Jharkhand, but admittedly he has been residing in the district of Patna, Bihar and drawing the pension from State Bank of India at Patna Branch. It is submitted that the pension is a continuing cause of action and a retired employee can seek recourse from the respective Court under whose territorial

jurisdiction, he is residing irrespective of the place of the employer. Reliance has also been made on a judgment of the Kerala High Court in the matter of ***WP (C) No. 22109 of 2022*** titled as ***M.S. Anil Vs. M/S. Hill (India) Ltd.***

7. This Court finds substance in the submission of the petitioner. It would be worth observing that the Apex Court in ***Shanti Devi @ Shanti Mishra Vs. Union of India and Ors. (Civil Appeal No. 3630 of 2020)***, reported in ***(2020) 10 SCC 766,*** while considering the question of *forum non conveniens* has held that where a pensioner approaches a Court for receipt of amounts due on account of his earlier service, the ground reality and the facts of the matter have to be looked into by the Constitutional Court. The Apex Court has held that for a retired employee, convenience is to prosecute his case at the place where he belongs to and was receiving pension at. It is not the convenience of the company/employer which has to be taken into account, but the convenience of the pensioner who otherwise would have to be driven to other jurisdiction to get amounts which are admittedly due to him.

8. Taking reliance on the aforesaid ratio, the learned High Court of Kerala at Ernakulam has rejected the preliminary objection of the company and found the writ petition on account

of the employee getting terminal benefits within the jurisdiction of the High Court of Kerala. In view of the aforesaid legal position, the objection raised by the respondent stands rejected.

9. Now coming to the merit of this case, the learned counsel for the petitioners in support of their reliefs have vehemently contended that the notification/resolution issued by the Government of India as well as the State of Bihar, wherein, the enhancement of pension as related to the age is prescribed, clearly reveals that enhancement from 80 years is 20 per cent, from 85 years 30 per cent, from 90 years 40 per cent, from 95 years 50 per cent and from 100 years or more 100 per cent of the revised pension.

10. The word “From” indicates that the enhancement scheduled, is due from the beginning of 80^{th} year, 85^{th} year, 90^{th} year, 95^{th} year and 100^{th} year. However, due to erroneous interpretation by respondents while executing the notification/resolution have understood the phrase <u>“On attaining and on completion”</u> of 80^{th} year etc, which is not only erroneous but is unjustified and unsustainable. It is submitted on behalf of the petitioners that the issue as to when the enhanced pension becomes effective had been settled by the judgment of the High Court of Karnataka, Dharwad Bench in ***WP No. 105189 of 2014***

in ***Siddangouda Shivabasanagouda Aayyangoudra Vs. Principal Accountant General Karnataka*** and further by Guwahati High Court in ***WP (C) No. 4224 of 2016*** in the case of ***Virendra Dutt Gyani, Ex Acting CJI Guwahati High Court Vs. Union of India and Ors.***, which judgment has also attained finality in ***Civil Appeal (Diary No. 18133 of 2019)*** vide order dated 08.07.2019 passed by the Hon'ble Supreme Court.

11. Further reliance has also been made on a judgment rendered by the Armed Forces Tribunal in the case of ***Lt. Gen Gorakh Nath (Retd) Vs. Union of India & Ors.*** wherein, the Tribunal while examining the identical resolution, which was found to be *pari materia* to the Government of India notification has held that the interpretation given to the word; 80^{th} year by Hon'ble Guwahati High Court would be applicable to the ex service man of the Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi and the denial of the benefit of the petitioners of that case held to be arbitrary and illegal.

12. Per contra, learned counsel for the State as well as Bank refuting the contention of the petitioners submitted that the additional 20 per cent of pension is being paid to the petitioners with effect from the date, he has completed 80 years of age in consonance with the terms of the

notification/resolution based upon its correct interpretation of provisions. It is stated that a Government servant would be entitled to receive 20 per cent of the Basic Pension as an additional pension and an additional 30 per cent of the Basic Pension only upon attaining the 80^{th} and 85^{th} year of age, therefore, only on account of entering into 80^{th} or 85^{th} year, as the case may be, the petitioner would not be entitle for being paid the enhanced pension/additional pension. It is next submitted that the reliance placed upon the decision of the Hon'ble Guwahati High Court in the case of ***Virendra Dutt Gyani (supra)*** is misplaced and not applicable in the present case. The decision of the Hon'ble Guwahati High Court was based upon the interpretation of Section 17 (B) of the High Court Judges (Salaries and Conditions of Service) Act, 1954 and no reliance can be raised upon by the petitioners to seek parity.

13. This Court has heard the learned counsel for the respective parties and also perused notification/resolution issued by the Government of India as well as the State of Bihar.

14. Before, parting with the final outcome, this Court deems it apt to quote the relevant extract of the notification/resolution issued by the Government of India, Ministry of Personal, Public Grievance & Pensions dated 02^{nd}

September, 2008.

5.7 The quantum of pension available to the old pensioners shall be increased as follows:

Age of Pensioner	**Additional quantum of pension**
From 80 years to less than 85 years	20 % of basic pension
From 85 years to less than 90 years	30 % of basic pension
From 90 years to less than 95 years	40 % of basic pension
From 95 years to less than 100 years	50 % of basic pension
100 years or more	100 % of basic pension

15. The Government of Bihar keeping note of the aforenoted notification dated 02.09.2008 of the Government of India, has also taken a decision to revise the pension and extend the benefit of enhanced additional quantum of pension and the relevant extract of the same is also quoted hereinbelow:-

(viii) अतिरिक्त पेंशन– *80 वर्ष एवं उससे अधिक आयु के पेंशनधारियों को उपर्युक्त रीति से निर्धारित पेंशन के साथ–साथ निम्नांकित सारणी के अनुसार अतिरिक्त पेंशन का भुगतान किया जाएगा।*

पेंशनधारी / परिवार पेंशनधारी की उम्र	अतिरिक्त पेंशन की राशि
80 वर्ष एवं अधिक किन्तु 85 वर्ष से कम	पुनरीक्षित मूल पेंशन / पारिवारिक पेंशन का 20 प्रतिशत
85 वर्ष एवं अधिक किन्तु 90 वर्ष से कम	पुनरीक्षित मूल पेंशन / पारिवारिक पेंशन का 30 प्रतिशत
90 वर्ष एवं अधिक किन्तु 95 वर्ष से कम	पुनरीक्षित मूल पेंशन / पारिवारिक पेंशन का 40 प्रतिशत

95 वर्ष एवं अधिक किन्तु 100 वर्ष से कम	पुनरीक्षित मूल पेंशन/पारिवारिक पेंशन का 50 प्रतिशत
100 वर्ष या उससे अधिक	पुनरीक्षित मूल पेंशन/पारिवारिक पेंशन का 100 प्रतिशत

16. Prima facie, from the reading of both the notification/resolution of the Government of India as well as State of Bihar it specifically says; from 80 years to less than 85 years and 80 वर्ष एवं अधिक किन्तु 85 वर्ष से कम. The word “From” use to show the time or point in time when something starts. As per the dictionary meaning, it is used as a function word to indicate the starting or focal point of an activity. Thus, it explicitly connote that from commencement point of 80 years, till the pensioner attains less than 85 years.

17. There is no iota of confusion that the first slab starts from 80th years to less than 85th years and likewise, the second slab starts from 85th years to less than 90 years. The similar slab of 5 years also starts after completion of every 5 years, thereafter, till attaining the age of 100 years. The expression used herein, in the aforenoted slab is quite clear, which says that it is either less than 85th years or less than 90th years and when the Government notification/resolution say: from 80 years, it would be certainly from the first day of 80th years till last day of 84th years and not after completion of 80th year till last day of 85th year and likewise.

18. The issue as to when the enhanced additional

pension would become effective was also questioned before the High Court of Karnataka, Dharwad Bench in the case of ***Siddangouda Shivabasanagouda Aayyangoudra (supra)*** and subsequently before the learned Guwahati High Court in the case of ***Virendra Dutt Gyani (supra).***

19. A Division Bench of learned Guwahati High Court in ***WP (C) No. 4224 of 2016 (Virendra Dutt Gyani) (supra)*** considering the similar issue involved in the present writ petitions, while interpreting Section 17 (B) of the High Court Judges (Salaries and Conditions of Service) Act, 1954 which also provides similar benefit of entitlement of 20 per cent of additional quantum on the basic pension from 80 years to less than 85 years to a retired High Court Judges, and is pari materia to the provisions, as contemplated by the Government of India, as also the resolution issued by the State of Bihar, has been pleased to hold that the benefit of additional pension shall be payable with effect from the first date of entering into 80th year, till completion of 84 years. Likewise, the further additional quantum of pension shall be given from the first day of 85th year till completion of 89th year and further similar benefit till completion of 100th year.

20. It would be worth benefiting to quote paragraph

nos. 28, 29 and 32 of the aforenoted judgment:

"28. If we look at the first two slabs, we find that the first slab is from 80 years to less than 85 years and the second slab is from 85 years to less than 90 years. The second expression in both the slabs is quite clear : it is either less than 85 years or less than 90 years. Now, if we apply the interpretation given by the respondents to the first expressions i.e., from 80 years and from 85 years, consequence would be that on completion of 80 years to less than 85 years a retired judge would be entitled to the first scale of additional pension and again on completion of 85 years to less than 90 years, the retired judge would be entitled to the second scale of additional pension. In this process, not only the 80th year would stand excluded, even the 85th and 90th years would be excluded. Likewise, the 95th year as well as the 100th year would also be excluded. This could not be and certainly was not the intention of the law makers. Therefore, by applying purposive interpretation, we have no hesitation in our mind that the interpretation put forward by the respondents is not only unreasonable and irrational leading to an anomalous situation, it would also defeat the very object behind insertion of Section 17B in

the Act.

29. This question can also be looked at from another angle. When we say "from 2016 onwards" what do we mean? Whether it would be from 01-01-2016 i.e., from the first day of the year 2016 or on completion of the year 2016 on 31-12-2016? The answer is quite apparent; it has to be from the first day of the year itself.

32. Therefore, on a thorough consideration of the matter, we hold that the benefit of additional quantum of pension as per Section 17B of the Act in the first slab would be available to be a retired judge from the first day of his 80th year. In so far petitioner is concerned, he would be entitled to the said benefit from 30-07-2015 which was the first day of his 80th year. Ordered accordingly."

21. It is also to be noted that the aforenoted judgment of the learned Guwahati High Court was also assailed by the ***Union of India and Ors.*** in ***Special Leave Petition (Civil) Diary No. 18133 of 2019***, which came to be dismissed vide order dated 08.07.2019 and thus, the judgment of the learned Guwahati High Court in this way affirmed by the Hon'ble Apex Court.

22. It has rightly been pointed out by the learned counsel for the petitioners that in the said case, the State Bank

of India was party respondent and, as such, any contrary submissions on behalf of the Bank to the observations/decisions rendered by the learned Division Bench of Guwahati High Court, affirmed by the Hon’ble Supreme Court would amount to overreaching the settled propositions of law. Thus, the State Bank of India is debarred from raising any such plea inconsistent to the judgment discussed hereinabove.

23. This Court cannot lose sight of the fact that the notification/resolution of the Government of India as well as the State of Bihar granting enhanced additional quantum of pension to the retired employees from 80 years, 85 years and onwards is issued in the welfare of the pensioners and beneficial ones. Thus, the principle of purposive construction will come into play.

24. The learned Guwahati High Court before coming to the aforenoted conclusion, has rightly considered the judgment rendered by the Hon’ble Supreme Court in the case of ***Bengal Immunity Co. Ltd. Vs. State of Bihar*** reported in ***AIR (1955) SC 661***, wherein it was held that, “it is a sound rule of construction of a statute for the sure and true interpretation of all statutes in general, including beneficial ones. After discerning and considering the four things as noticed above, the Court is

always to make such construction as shall suppress the mischief and advance the remedy; to suppress subtle inventions and evasions for continuance of the mischief; and to add force and life to the cure and remedy, according to the true intent of the makers of the Act. It is trite law that in certain interpretations, Court would adopt that which is just, reasonable and sensible. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty has to be avoided."

25. The uniformity is the hallmark of the judiciary and once the issue has already been set at rest and unless, there is a cogent reason/ground of differentiation, the Courts are bound to follow the settled dictum.

26. This Court having carefully examined the notification issued by the Government of India and the resolution of the State of Bihar issued in consonance therewith, finds that the word "from 80 years to less than 85 years" and likewise similar enhanced additional pension would certainly starts from the first day of 80^{th} years till less than 85 years, meaning thereby, the first day of 80^{th} year till last day of 84^{th} years and likewise in subsequent slab.

27. In view of the discussions made hereinabove, this

Court has no hesitation to hold and declare that the petitioners are entitled for being paid the enhanced pension, i.e., additional 20 per cent of basic pension with effect from the date, it starts from beginning of 80^{th} years till completion of 84^{th} years and likewise additional 30 per cent of basic pension in the next slab from beginning of the 85^{th} years till completion of 89^{th} years and similarly additional enhanced pension in the next slab, from the beginning of the year of 90 to 94 and 95 to 100. Accordingly, the respondents are directed to ensure the payment of all the consequential benefits preferably within a period of eight weeks from the date of receipt/production of a copy of this order/judgment.

28. The writ petitions stand allowed.

29. There shall be no order as to cost.

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	12.12.2023.
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