IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (S) No. 5598 of 2021

.....

1. Krishna Kant Mukherjee, aged about 71 years, son of Pashupati Mukherjee, resident of Brahmandiha, Dhanbad, P.O. and P.S. Dhanbad, District Dhanbad, Jharkhand.

2. Vidya Sagar Prasad, aged about 69 years, son of Dhanik Prasad, resident of Telmunga, Kasmar, P.O. and P.S. Kasmar, District Bokaro, Jharkhand.

3. Ishwar Chandra Prasad, aged about 61 years, son of Dhanik Prasad, resident of Telmunga, Kasmar, P.O. and P.S. Kasmar, District Bokaro, Jharkhand.

4. Savitri Devi, aged about 56 years, wife of Buddha Deo Pandey, resident of Village Dolabar, P.O. Moko, P.S. Baliapur, District Dhanbad, Jharkhand.

5. Motilal, aged about 73 years, son of Late Gulabchand Saw, resident of near Devi Mandir, Garhwa Shahpur Road, Shahpur, P.O. and P.S. Shahpur, District Palamu.

6. Ashok Kumar Sinha, aged about 68 years, son of Rajkumar Sinha, resident of Ward No.11, Japla Dharhara, P.O. Japla, P.S. Hussainabad, District Palamu.

.....**Petitioners.**

Versus

1. The State of Jharkhand, through its Chief Secretary, Co-operative Department, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

2. The Secretary, Department of Co-operative Department, Government of Jharkhand, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

3. The Finance Secretary, Department of Co-operative Department, Government of Jharkhand, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

4. The Deputy Commissioner, Bokaro, P.O. and P.S. Bokaro, District Bokaro, Jharkhand.

5. The Deputy Commissioner, Palamu at Daltonganj, P.O. and P.S. Medininagar, District Palamu. .....**Respondents**

With

W.P.(S) No. 5489 of 2021

1. Chandra Mohan Mahto, aged about 71 years, son of Raiya Mahto, resident of Adarsh Nagar, Bundu, N.H.-3, P.O. and P.S. Bundu, District Ranchi, Jharkhand.

2. Nazier Ahmad Khan, aged about 68 years, son of Maniruddin Khan, resident of Village Semartoli, P.O. and P.S. Kanke, District Ranchi, Jharkhand.

3. Anant Das Goswami, aged about 71 years, son of Tulsi Das Goswami, resident of Tutki, P.O. and P.S. Tutki, District Ramgarh, Jharkhand.

4. Ganesh Chandra Manjhi, aged about 70 years, son of Rameshwar Manjhi, resident of Village Dulmi, P.O. T.T. Mankidih, P.S. Dulmi, District Ranchi, Jharkhand.

5. Nakul Halwai, aged about Kisto Halwai, resident of Village Sonahatu, P.O. and P.S. Sonahatu, District Ranchi, Jharkhand.

7. Anil Kumar, aged about 63 years, son of Late Babu Ram Singh, resident of Village Berwari, near Shiv Mandir, P.O. and P.S. Berwari, District Ranchi, Jharkhand.

.....**Petitioners.**

Versus

1. The State of Jharkhand, through its Chief Secretary, Co-operative Department, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

2. The Secretary, Department Co-operative Department, Government of Jharkhand, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

3. The Finance Secretary, Department of Co-operative Department, Government of Jharkhand, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

4. The Deputy Commissioner, Ranchi, having its office at near Kutchhery Chowk, P.O. GPO Ranchi, P.S. Kotwali, District Ranchi. ….**...Respondents.**

With

W.P.(S) No. 5500 of 2021

1. Juna Hansda, aged about 66 years, son of Late Raindha Hansda, resident of Village Lilatari, P.O. Lilatari, P.S. Jama, District Dumka, Jharkhand.

2. Bhagwan Das Sah, 71 years, son of Sudarshan Prasad Sah, resident of Village Jarmundi, P.O. and P.S. Jarmundi, District Dumka, Jharkhand.

3. Paul Hansda, aged about 62 years, son of Munshi Hansada, resident of Village Nachangaria, Chiharbani, P.O. Nachangaria, P.S. Jama, District Dumka, Jharkhand.

4. Prandhan Darbey, aged about 72 years, son of Late Shashi Bhushan Darbey, resident of Village Laxmipur, P.O. Laxmipur, P.S. Jama, District Dumka, Jharkhand.

5. Duryodhan Manjhi, aged about 62 years, son of Late Kartik Manjhi, resident of Village Daulatpur, P.O. Singhni, P.S. Jarmundi, District Dumka, Jharkhand.

6. Ganesh Prasad Sah, aged about 62 years, son of Late Jhagru Ram, resident of Village Simalduma, P.O. Guhiajori, P.S. Jama, District Dumka, Jharkhand.

7. Baidya Nath Mandal, aged about 71 years, son of Krishna Sekhar Mandal, resident of Village Gorjuri, P.O. Palajuri, P.S. Kundahit, District Jamtara, Jharkhand.

8. Basant Yadav, aged about 60 years, son of Late Dev Prasad Yadav, resident of Village Lakshmipur, P.O. Lakshmipur, P.S. Jama, District Dumka, Jharkhand.

9. Binay Kumar Jaiswal, aged about 62 years, son of Late Abadh Behari Jaiswal, resident of Village Nakrapahari, P.O. Nakrapahari, District Dumka, Jharkhand. P.S. Jama

10. Diwakar Singh, aged about 63 years, son of Late Rajbansh Singh, resident of Village Tendua, P.O. Darigaon, P.S. Sasaram, District Rohtas, Bihar. **.....Petitioners**

Versus

1. The State of Jharkhand, through its Chief Secretary, Co-operative Department, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

2. The Secretary, Department of Co-operative Department, Government of Jharkhand, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

3. The Finance Secretary, Department of Co-operative Department, Government of Jharkhand, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

4. The Deputy Commissioner, Dumka, P.O. and P.S. Dumka, District Dumka, Jharkhand. ..**...Respondents.**

With

W.P.(S) No. 5630 of 2021

1. Md. Mustakim Ansari, aged about 69 years, son of Matwar Mian, resident of Pathuria, Patring, Dhanbad, P.O. and P.S. Dhanbad, District Dhanbad, Jharkhand.

2. Sahadeo Sen, aged about 70 years, son of Late Hadi Ram Sen, resident of Tundi Road, Govindpur, P.O. and P.S. Govindpur, District Dhanbad, Jharkhand.

3. Kala Chand Mandal, aged about 62 years, son of Late Murli Dhar Mandal, resident of Village Kulbera, P.O. Kalyanpur, P.S. Barwadda, District Dhanbad, Jharkhand.

4. Md. Eyakub Kazi, aged about 68 years, son of Late Ali Nawaj Kazi, resident of Village Nawatand, P.O. Nagar Kiyari, P.S. Barwadda, District Dhanbad, Jharkhand.

5. Shankar Prasad, aged about 71 years, son of Nand Prasad Kurmi, resident of near Panchayat Bhawan, Pandarpala, Mahato Tola, Bishunpur, P.O. and P.S. Dhanbad, District Dhanbad, Jharkhand.

6. Yadunandan Prasad Singh, aged about 68 years, son of Late Chandeshwar Prasad Singh, resident of Gandhi Mela Path, Tundi Road, P.O. and P.S. Govindpur, District Dhanbad, Jharkhand.

7. Sakhi Ahmad, aged about 70 years, son of Kalimuddin Miyan, resident of Chhota Pichhary, P.O. Kalyanpur, P.S. Barwadda, District Dhanbad, Jharkhand.

8. Hingula Mahato, aged about 59 years, wife of Brahama Charan Mahato, resident of Village Moranga, Jangalpur, Dhanbad, P.O. and P.S. Dhanbad, District Dhanbad.

.....Petitioners.

Versus

1. The State of Jharkhand, through its Chief Secretary, Co-operative Department, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

2. The Secretary, Department of Co-operative Department, Government of Jharkhand, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

3. The Finance Secretary, Department of Co-operative Department, Government of Jharkhand, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

4. The Deputy Commissioner, Dhanbad, P.O. and P.S. Dhanbad, District Dhanbad, Jharkhand. **.....Respondents.**

With

W.P.(S) No. 1613 of 2022

1. Shankar Prasad Choudhary, aged about 66 years, son of Late Satyanarayan Choudhary, resident of Village Motia, P.O. and P.S. Motia, District Godda, Jharkhand.

2. Shiv Kumar Jha, aged about 72 years, son of Late Mahendra Narayan Jha, resident of Village Baisadhi, P.O. Malini, P.S. Godda (M), District Godda, Jharkhand.

3. Sattan Ravidas, aged about 67 years, son of Late Butan Ravidas, resident of Village Tulsikitta, P.O. and P.S. Pathargama, District Godda, Jharkhand.

4. Prem Sagar Choudhari, aged about 69 years, son of Late Basudev Kewat, resident of Village Borio, P.O. and P.S. Borio, District Sahebganj, Jharkhand.

5. Viveka Nand Ram, aged about 71 years, son of Late Mathuri Prasad Sah, resident of Village Kodi Bahiyar, P.O. Kodi Bahiyar, P.S. Godda, District Godda, Jharkhand.

6. Gopal Chandra Rai, aged about 72 years, son of Late Krishna Chandra Rai, resident of Village Jonka, P.O. Jonka, P.S. Tinpahar, District Sahebganj, Jharkhand.

7. Dulal Prasad Bhagat, aged about 72 years, son of Late Bholanath Bhagat, resident of Village Pathardanga, P.O. and P.S. Pakuria, District Pakur, Jharkhand.

8. Sona Lal Hansda, aged about 66 years, son of Late Surju Hansda, resident of Village Punsia, P.O. Bhalsumar, P.S. Ramgarh, District Dumka, Jharkhand.

9. Deep Narayan Prasad Yadav, aged about 66 years, son of Late Tandel Prasad Yadav, resident of Village Babupur, P.O. Gadijhopa, P.S. Saraiyahat, District Dumka, Jharkhand.

10. Parshuram Yadav, aged about 67 years, son of Late Bhagirath Mahto, resident of Village Dholpahri, P.O. Matihani Chikaniya, District Dumka, Jharkhand.

11. Krishna Prasad Mahato, aged about 72 years, son of Late Shivlal Mahato, resident of Village Kairbank, P.O. and P.S. Rikhiya, District Deoghar, Jharkhand.

12. Jaynarayan Yadav, aged about 65 years, son of Late Visheshwar Yadav, resident of Village Dumariya, P.O. Mohanpur Hat, P.S. Mohanpur, District Deoghar, Jharkhand.

13. Mahendra Prasad Modi, aged about 72 years, son of Late Sardari Modi, resident of Village Aamgachhi, P.O. Malhara, P.S. Rikhiya, District Deoghar, Jharkhand.

14. Nageshwar Layak, aged about 67 years, son of Late Ram Kishan Layak, resident of Village Sarangpani, P.O. Amarpur, P.S. Ramgarh, District Dumka, Jharkhand.

15. Pramod Kumar Tiwary, aged about 66 years, son of Late Anand Narayan Tiwary, resident of Village Rajasar, P.O. Rohini, P.S. Jasidih, District Deoghar, Jharkhand.

16. Kamakhya Narayan Singh, aged about 72 years, son of Late Satyendra Prasad Singh, resident of Village Bagat Khuthari, Chandpur, P.O. Dewanchak, P.S. Meharma, District Godda, Jharkhand.

17. Prabhawati Devi, aged about 62 years, wife of Late Avdheshwar Prasad Singh, resident of Village Sadhariya, P.O. Chatakmara, P.S. Sarath, District Deoghar, Jharkhand.

18. Kamleshwar Prasad Rai, aged about 72 years, son of Late Sitaram Rai, resident of Village & P.O. Baghmari, via. Rohini, P.S. Devipur, District Deoghar, Jharkhand.

19. Mohanlal Thakur, aged about 72 years, son of Late Jyotindra Thakur, resident of Village Matiyara, P.O. and P.S. Pathrol, District Deoghar, Jharkhand.

20. Gouri Shankar Bhaiya, aged about 72 years, son of Late Dashrath Bhaiya, resident of Village Pattajori, P.O. Pattajori, P.S. Karmatand, District Jamtara, Jharkhand.

21. Shyam Sunder Das, aged about 64 years, son of Late Gopi Das, resident of Village Bhera, Bhandar Koli, P.O. Haripur Gairbanna, P.S. Godda (M), District Godda, Jharkhand.

22. Babudhan Hansda, aged about 62 years, son of Late Madan Hansda, resident of Village Baratand, P.O. Baratand, P.S. Jarmundi, District Dumka, Jharkhand.

23. Mritunjay Jha, aged about 71 years, son of Late Shiv Kumar Jha, resident of Village Derma, P.O. Sanaur, P.S. Basantrai, District Godda, Jharkhand.

24. Ramdulari Devi, aged about 50 years, wife of Late Ramesh Prasad Sah, resident of Village Rohini, P.O. Rohini, P.S. Jasidih, District Deoghar, Jharkhand.

25. Shreeprasad Mahto, aged about 71 years, son of Late Mahavir Mahto, resident of Village Barabandh (Gandhigram), P.O. Gandhigram, P.S. Pathargama, District Godda, Jharkhand. **.....Petitioners.**

Versus

1. The State of Jharkhand, through its Chief Secretary, Co-operative Department, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

2. The Secretary, Department of Co-operative Department, Government of Jharkhand, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

3. The Finance Secretary, Department of Co-operative Department, Government of Jharkhand, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

4. The Deputy Commissioner, Godda, P.O. and P.S. Godda, District Godda, Jharkhand.

5. The Deputy Commissioner, Sahibganj, P.O. and P.S. Sahibganj, District Sahibganj, Jharkhand.

6. The Deputy Commissioner, Jamtara, P.O. and P.S. Jamtara, District Jamtara, Jharkhand.

7. The Deputy Commissioner, Dumka, P.O. and P.S. Dumka, District Dumka, Jharkhand.

8. The Deputy Commissioner, Deoghar, P.O. and P.S. Deoghar, District Deoghar, Jharkhand. **.....Respondents.**

With

W.P.(S) No. 3299 of 2022

1. Deepak Kumar Sharma, aged about 67 years, son of Late Rameshwar Sah, resident of near Santoshi Mata Mandir, Rasikpur, Kewatpara, P.O. and P.S. Dumka, District Dumka, Jharkhand.

2. Arun Kant Bandopadhyay, aged about 68 years, son of Late Bimal Kumar Bandopadhyay, resident of Ashram School Road (near S.D.E.), Dudhani, P.O. and P.S. Dumka, District Dumka, Jharkhand.

3. Ghanshyam Khirhar, aged about 68 years, son of Late Tejnarayan Khirhar, resident of Village & P.O. Tarajora, P.S. Jama, District Dumka, Jharkhand.

4. Sanat Kumar Mandal, aged about 70 years, son of Late Kartik Chandra Mantal, resident of Village Chakdi, P.O. Ladna (Jamtara), P.S. Jamtara, District Jamtara, Jharkhand.

5. Srimant Kumar Mandal, aged about 70 years, son of Late Sarveshwar Mandal, resident of Village Shreedhar Para, P.O. Bannogram, P.S. Pakuria, District Pakur, Jharkhand. Presently residing at Village Bannogram, P.O. Bannogram, P.S. Pakuria, District Pakur, Jharkhand.

6. Vishwanath Halwai, aged about 67 years, son of Late Hiralal Halwai, resident of Village Shreedhar Para, P.O. Bannogram, P.S. Pakuria, District Pakur, Jharkhand.

7. Aruna Devi, aged about 64 years, widow of Late Hirendu Chandra Ruj, resident of Village Hiranpur Bazar, P.O. Hiranpur, P.S. Pakur, District Pakur, Jharkhand.

.....Petitioners.

Versus

1. The State of Jharkhand, through its Chief Secretary, Co-operative Department, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

2. The Secretary, Department of Co-operative Department, Government of Jharkhand, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

3. The Finance Secretary, Department of Co-operative Department, Government of Jharkhand, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.

4. The Deputy Commissioner, Dumka, P.O. and P.S. Dumka, dotad District Dumka, Jharkhand.

5. The Deputy Commissioner, Jamtara, P.O. and P.S. Jamtara, District- Jamtara, Jharkhand. **.....Respondents.**

CORAM : HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioners : Mr. Saurabh Shekhar, Adv
Mr. Shail Lakra, Adv
Mr. Aman Dayal Singh, Adv
(in all cases)

For the Respondents : Mr. K.K.Singh, S.C.-V
(WPS No. 5489 of 2021)
Mr. J.F. Toppo, GA-V
(WPS No. 5598 of 2021)
Mr. Praveen Akhauri, S.C. (Mines)I
(WPS No. 5500 of 2021)
Mr. Amit Kumar, S.C. (Mines)II
(WPS No. 5630 of 2021)
Mr. Pradeep Kumar, A.C. to AAG-IV
(WPS No. 1613 of 2022)
Ms. Rishi Bharti, Act to AAG-III
(WPS No. 3299 of 2022)

CAV On 24.09.2024 **Pronounced on:09/12/2024**

Heard learned counsel for the parties.

2. The present batch of writ petitions have been filed praying for a direction upon the respondents to count the past services in continuity, in respect to the period that the petitioners have rendered as Paid Manager in the Central Co-operative Bank, before they were absorbed in the Government service on Class-III Posts, for the purpose of making payment of the benefits of ACP / MACP Schemes.

Further prayer has been made to modify the fixation of pension on the basis of improved salary and last pay drawn. The petitioners have also claimed for payment of arrears of pensionary benefits.

3. All these matters are arising from the identical facts and the petitioners in all the cases have prayed for identical reliefs. The pleading in all these writ petitions as well as counter affidavits are same and similar; accordingly, with consent of the parties, all these writ petitions were heard together and disposed of by this common order.

4. The brief facts are that the petitioners were appointed initially as Paid Managers in different Central Co-operative Banks of the State of Jharkhand on different dates; from the year 1975-1985. Thereafter, they raised a plea to absorb them in regular establishment of the Government Service. Pursuant to this, all the petitioners, working as Paid Managers

participated in the selection process and were found fit. As a result, the petitioners were selected and absorbed in the Class-III Posts of the Government of Jharkhand, in the year 2003. Thereafter, they rendered their services and superannuated on different dates in the year 2009-10.

After their retirement, they raised claim with the Government that their past services, i.e. prior to absorption should be counted, for the payment of pensionary benefits, accordingly they should be found eligible for grant of pension on counting of cumulative period of service rendered by them, including the period prior to the date of absorption. Their claim was rejected by the respondents.

Thereafter, several writ petitions were filed which were allowed and the rejection order was set aside and quashed. Further, in the intra court appeal the Court directed the State Government to formulate a policy, without interfering with the observations given the Learned Single Judge. Thereafter, a policy was framed but petitioners were not granted the benefit of MACP and ACP, hence these writ petitions have been filed.

5. Learned Counsel for the petitioners submit that the respondents by passing of a reasoned order, denied the claim of the petitioners stating that the period prior to absorption is a period when the petitioners have rendered as Paid Managers in the Central Co-operative Bank. They stated that this period is not a period to be categorized as that of Government Service, as

the post of Paid Manager is not a Government sanctioned post. In that view of the matter, the claim of the petitioners was denied by the respondent-State (Department).

He further submits that against the rejection order, several writ petitions were filed, which were heard and decided together. The writ petitions were allowed and the order of rejection dated 07.03.2014 was quashed and set aside and a direction was issued to the respondents to consider the matter afresh, taking into account the observations made by the Court, within specified period.

He further submits that the intra court appeal preferred by the government against the judgment of writ court was dismissed and the Division Bench of this Court directed the State Government to formulate a policy, without interfering with the observations of the Learned Single Judge.

He lastly submits that when the respondents have considered their past services as valid, then there is no logic in denying the same services, which has been considered as to be good and substantive for grant of pension and to be not good and substantive for grant of ACP / MACP benefits.

6. Learned counsel for the respondent submits that the Paid Managers are not Government servants and hence, they cannot claim parity with the salary paid to regular Government servant. In view of the Circular No. 503 dated 31.05.1989, the paid

managers are neither government servant, nor entitled for any kind of payment from the State Government. Hence, the prayer of petitioners for absorption of their service as Paid Manager for the purpose of benefits of ACP/MACP are not legally enforceable against the Respondent State.

He further submits that in the light of the decision taken vide Memo. No. 469 dated 20.03.2020, all the Deputy Commissioners were directed to take appropriate steps for computing and determining the pensionary/consequential benefits of Paid Managers vide Letter No. 674 dated 10.06.2020 and letter No.1432 dated 27.08.2020 by the office of Respondent No.2.

He lastly submits that none of the petitioners are fulfilling the pre-requisite prescribed under scheme to get benefit of ACP/MACP; hence they are not eligible for this benefit on the basis of their past services as Paid Managers as enumerated in the circulars for the grant of ACP/MACP.

7. Having heard learned counsel for the parties and after going through the documents annexed with the respective affidavits and averments made therein, it appears that the petitioners were appointed initially as Paid Managers in different Central Co-operative Banks of State of Jharkhand, on different dates; i.e. from the year 1975-1985. Thereafter, they raised a plea to absorb them in Government Establishment.

This matter was contested and had traveled up to Hon'ble Supreme Court of India in the case of ***State of Bihar v. Bihar Rajya Sahkarita Prabandhak Seva Sangh*** reported ***in (1998) 8 SCC 218***, wherein the Hon'ble Supreme Court directed the State Government to conduct a selection process, with possible relaxation, in order to absorb the employees in Regular Establishment of the Government Service. Pursuant thereto; all the petitioners, working as Paid Managers participated in the selection process and were found fit. As a result, the petitioners were selected and absorbed in the Class-III Posts of the Government of Jharkhand, in the year 2003. Thereafter, they rendered their services and came to retire on different dates.

8. After the retirement, the petitioners raised claim with the Government that their past services, i.e. prior to absorption should be counted, for the purpose of payment of pensionary benefits, and accordingly they should be found eligible for grant of pension on counting of cumulative period of service rendered by them, including the period prior to the date of absorption. The respondents by passing orders denied the claim of the respective petitioners, stating that the period prior to absorption is a period that the petitioners have rendered as Paid Managers in the Central Co-operative Bank; as such, this period is not a period to be categorized as that of Government Service.

9. From record, it further appears that against the order of rejection passed by the respondents, whereby the claim of the

petitioners was rejected; the petitioners moved before this court. The matter being *W.P.(S) No. 4461 of 2009*, in the case of ***Bijay Kumar Jaiswal and Others Vrs. State of Jharkhand and Others and analogous matters***, this Court heard the parties and passed final order on 13.04.2016. The writ petitions were allowed and the order of rejection dated 07.03.2014 was quashed and set aside. A direction was issied to the respondents to consider the matter afresh.

The writ court in the said *W.P.(S) No. 4461 of 2009* observed that once decision for absorption in service under the scheme of absorption has been taken, the services rendered before absorption would be deemed to be legal and valid. At such belated stage and with a passage of years, it would not be fair on the part of the Welfare State to deny / wipeout or to obliterate past services, so as to deny counting their past services for computation of pension. For ready reference, paragraph nos.17 and 18 of the judgment of Writ Court are quoted herein below:

> ***"17.*** *Moreover, once decision for absorption in service under the scheme of absorption has been taken, the services rendered for absorption would be deemed to be legal and valid. And at such belated stage and with a passage of years, it would not be fair on the part of the Welfare State to deny / wipeout or to obliterate past services, so as to deny counting past services so as to deny counting their past services for computation of pension.*
>
> ***18.*** *In this context, the Hon'ble Apex Court in the case of Usha Rani Dutta, Aaya / Attendant &Ors. Vs. State Industrial Court, Indore &Ors.as reported in (1985) 3 SCC 148 has held that after the absorption of the employees in Bhilai Steel Plant their services shall be counted since the*

commencement of their employment and treated to be continuous."

Thereafter, the respondent preferred intra court appeal against the said judgment before the Division Bench being *L.P.A. No. 447 of 2016*, wherein vide judgment and order dated 11.09.2018, the Division Bench, without interfering with the observations of the Learned Single Judge, directed the State Government to formulate a policy. It was observed that the respondent State should decide the claims of the litigants to calculate their previous service in the Co-operative Bank as pensionable service in the State Government. For ready reference, paragraph 7 of L.P.A. *No. 447 of 2016* is quoted herein below:

> **"7.** *Thus, we also hereby direct the State of Jharkhand to decide the claims of the present respondents (original petitioners) in accordance with law, rules, regulations and Governmental policy to calculate their previous services in the Co-operative Society as a pensionable service in the State Government. If any new policy is formulated by the State Government for the purpose of the pension, the same shall be applicable to the original petitioners also. The decision will be taken by the State Government independent of the observations made by the learned Single Judge in the writ petition as well as independent of the observations made in this order also. We also direct the State of Jharkhand to decide the claims of the present respondents (original petitioners) after giving adequate opportunity of being heard to them, as early as possible and practicable, preferably within a period of four months from the date of receipt of a copy of the order of this Court. If any adverse order is passed, liberty is reserved with the present respondents (original petitioners) to challenge the same in accordance with law before appropriate forum."*

10. It further appears from record that pursuant to the order passed by the Division Bench, the respondent-State, through Department of Agriculture, Animal Husbandry and Co-operative (Co-operative Wing), came-up with a resolution as contained in Memo No. 469, dated 20.03.2020; whereby the

Department undertook that the employees / petitioners would get the benefits of past services of the period they have rendered as Paid Managers. A formula was adopted and 5 years of services rendered as Paid Managers would be counted as one. Further, those who had completed 10 years of services , as qualifying period, their services would be considered as complete, and they would be held as entitled for receiving pension, on the basis of past services rendered as Paid Manager, prior to absorption.

11. Thus, the sole issue to be decided by this Court is as to whether the petitioners are entitled to claim their past services in continuity, in respect to the period in which they have rendered as "Paid Manager" in the Central Co-operative Bank, before they were absorbed in the Government service on Class-III Posts, for the purpose of making payment of the benefits of ACP / MACP Schemes?

12. Having regard to the aforesaid facts and development *prima facie* the case of the petitioners appears to be genuine and well founded and the same is based on the analogy, that the past services (as Paid Managers) prior to absorption should be counted for calculation of requisite service for ACP / MACP benefit because on the same analogy the decision taken by the State Government, the services has been considered as to be valid for grant of pension.

As a matter of fact, the respondents themselves have

relaxed the provision of Rule 58 and Rule 61 of the Pension Rules, in the matter of granting pensionary benefits to the petitioners.

Further, the respondents have considered their past services as valid as per the provision of Rule 58 and Rule 61 of the Pension Rules, then there is no logic in denying the same services, which has been considered as to be good and substantive for grant of pension, to be not good in substantive for grant of ACP / MACP benefits.

13. In the case of ***Usha Rani Dutta, Aaya / Attendant & Ors. Vs. State Industrial Court, Indore & Ors,*** reported in ***(1985) 3 SCC 148***, the Hon'ble Apex Court has categorically held that the absorption of an employee from one service to another would render the past services to be counted as one.

> ***"12.*** *The learned Member of the Industrial court with whom High Court appears to have agreed, was of the opinion that when the Clinic had its separate existence it was not covered in the expression "industry" and that even though Bhilai Steel Plant is an industry, the Clinic could not be styled as industry. In our opinion this distinction drawn is entirely meaningless. If Bhilai Steel Plant is an industry and if under the decision of this Court in Bangalore Water Supply & Sewerage Board v.R. Rajappa [(1978) 2 SCC 213 : 1978 SCC (L&S) 315 : (1978) 3 SCR 207] a hospital is an industry, this distinction drawn between two branches of administration of Bhilai Steel Plant attaches importance to a shadow without substance and substance without significance. The Clinic had no independent existence. In fact it was an euphemism to call it an independent undertaking. It was part and parcel of Bhilai Steel Plant administrative set-up. May be for purpose of accounting 100% grant received from the Government of India was kept in a separate*

account but that does not clothe the Clinic with any independent existence. It was nowhere suggested that the employees of the Clinic were employees of the Government of India. This aspect did agitate the mind of the High Court when it observed that: "it is a moot question whether the employees in the Clinic were employees of the Government of India or of the Plant". The undisputed fact is that the Clinic was managed by Chief Medical Officer of Bhilai Steel Plant with a designation of Administrative Officer of the Clinic and was accountable for the money received from the Government of India as grant to the Undertaking called Bhilai Steel Plant and if it was never contended that the employees of the Clinic were the employees of the Government of India, indisputably the Labour Court was perfectly justified in holding that the employees of the Clinic were the employees of the Bhilai Steel Plant working in a department called Clinic under the administrative control of Chief Medical Officer who was under the overall administrative control of the management of Bhilai Steel Plant. In our opinion, therefore the Labour Court was perfectly justified in holding that since the inception of the Clinic the employees were the employees of the Bhilai Steel Plant and that the absorption was an acceptance of reality avoiding the pretence."

(Emphasis supplied)

14. Having regard to the above decisions and taking into consideration of the fact that respondents have considered the past service of petitioners as valid as per the provision of Rule 58 and Rule 61 of the Pension Rules; then there is no logic in denying the same services for grant of ACP / MACP benefits. As stated hereinabove; service period of the "Paid Manager" has been accepted to be good and substantive for grant of pension, then there is no reason as to why the same period would be not good and substantive for grant of ACP / MACP benefits.

As such, the issue is answered in affirmative and this

Court holds that the past services (as Paid Managers) prior to absorption should be counted for calculation of requisite service for ACP / MACP benefits.

15. Accordingly, these writ applications stand allowed. The respondents are directed to count the past services in continuity for the purpose of making payment of the benefits of ACP/ MACP Schemes. The concerned Respondent are further directed to modify the fixation of pension on the basis of improved salary and last pay drawn and accordingly make payment of arrears of pensionary benefits as well. Pending I.A, if any, also stands disposed of.

(**Deepak Roshan, J.**)

Jharkhand High Court at Ranchi
Dated:-09/12/2024
Amardeep/
AFR/