

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12281 of 2023

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Mansoor Alam, Son of Mohammad Mehboob Alam @ Manghu Mian,
Resident of Mohalla- Nun Ka Chauraha Bangla Par, Jama Masjid, P.S.-
Khajkala, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Minority Welfare Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Minority Welfare, Government of Bihar, Patna.
3. The Additional Chief Secretary, Finance Department, Government of Bihar, Patna.
4. The Bihar State Sunni Waqf Board, 34 Ali Imam Path (Hardin Road), Patna through its Chief Executive Officer.
5. The Chairman, Bihar State Sunni Waqf Board, 34 Ali Imam Path (Hardin Road), Patna
6. The Chief Executive Officer, Bihar State Sunni Waqf Board, 34 Ali Imam Path (Hardin Road), Patna

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 14677 of 2023

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1. Ashique Rasool, son of Late Abdus Samad, Resident of Makhdoom Rasti Nagar, P.S.- Phulwarisharif, District- Patna, Bihar.
2. Shahzad, son of Late Md. Rahmat, resident of Village- Jamaluddin Chak, Near Gausia Masjid, P.O. and P.S.-Khagaul, District- Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Minority Welfare, Government of Bihar, Patna.
2. The Additional Chief Secretary, Finance Department, Government of Bihar, Patna.
3. The Secretary, Department of Minority Welfare, Government of Bihar, Patna.
4. The Bihar State Sunni Waqf Board, through the Chief Executive Officer, Bihar State Sunni Waqf Board, 34, Ali Imam Path, Harding Road, Patna.
5. The Chairman, Bihar State Sunni Waqf Board, 34, Ali Imam Path, Harding Road, Patna.
6. The Chief Executive Officer, Bihar State Sunni Waqf Board, 34, Ali Imam Path, Harding Road, Patna.

... .. Respondent/s

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with



Civil Writ Jurisdiction Case No. 3736 of 2024

- 1. Nusrat Jahan @ N. Jahan, Wife of Late Md. Aftab Alam, Resident of House No-85/1, Road No-7, Haroon Nagar Sector-1, P.S.- Phulwari Sharif, District- Patna.
- 2. Md. Sami Ahmad, Son of Late- Md. Khalil, resident of Mohallah- Gayas Nagar, Nohsa, P.S.- Phulwari Sharif, District- Patna

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
- 2. The Additional Chief Secretary, Department of Minority Welfare, Government of Bihar, Patna
- 3. The Additional Chief Secretary, Finance Department, Government of Bihar, Patna
- 4. The Joint Secretary-cum-Director, Minority Welfare Department, Government of Bihar, Patna
- 5. The Bihar State Sunni Waqf Board, 34 Ali Imam Path (Hardin Road), Patna through its Chief Executive Officer.
- 6. The Chairman, Bihar State Sunni Waqf Board, 34 Ali Imam Path (Hardin Road), Patna
- 7. The Chief Executive Officer, 7. Bihar State Sunni Waqf Board, 34 Ali Imam Path (Hardin Road), Patna

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 12281 of 2023)

- For the Petitioner/s : Mr. Md. Kamal Ashraf, Advocate
Mr. Avinash, Advocate
Mr. Anup Kumar, Advocate
- For the Respondent/s : Mr. Sita Ram Yadav, GP- 16
Mr. Yatindra Narayan, AC to GP- 16
- For the Waqf Board : Mr. Helal Ahmad, Advocate

(In Civil Writ Jurisdiction Case No. 14677 of 2023)

- For the Petitioner/s : Mr. Rashid Izhar, Advocate
Mr. Adil Abbas, Advocate
Mr. A. Imam, Advocate
- For the Respondent/s : Mr. Sita Ram Yadav, GP- 16
Mr. Yatindra Narayan, AC to GP- 16
- For the Waqf Board : Mr. Helal Ahmad, Advocate

(In Civil Writ Jurisdiction Case No. 3736 of 2024)

- For the Petitioner/s : Mr. Rashid Izhar, Advocate
Mr. Arif Daula Siddiqui, Advocate
Mr. Nouman Ahmad, Advocate
- For the Respondent/s : Mr. Addl. Advocate General (13)
Mr. Ravi Kumar, AC -AAG-13
- For the Waqf Board : Mr. Helal Ahmad, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 18-06-2025



Heard the learned Advocate for the petitioners,
Waqf Board and the State of Bihar.

2. The reliefs prayed for in all these writ petitions giving rise to one and identical issues, as such, with the consent of learned Advocate for the respective parties, the same are being heard together and disposed of by this common order.

3. The petitioners before this Court are either the retired employees of the Bihar State Sunni Waqf Board, Patna (hereinafter referred to as 'the Waqf Board') or their dependent, who approached this Court for issuance of writ in the nature of Mandamus, directing the respondent State as well as the Waqf Board to primarily hold and declare the petitioners entitled to get pension/family pension at par with the employees of the State Government. Further challenge has also been made to Memo No. 2365 dated 04.09.2023 issued by the Joint Secretary-cum-Director, Minority Welfare Department, Government of Bihar, Patna whereby it has been informed to the Bihar State Sunni Waqf Board, Patna as well as Bihar State Shia Waqf Board, Patna that in absence of the provision for pension, the employees of the Waqf Board are not entitled to get pension/family pension.

4. To impress this Court regarding entitlement of



pension/family pension to the retired employees/dependent of the Waqf Board, Mr. Rashid Izhar, learned Advocate appearing in C.W.J.C. No. 14677 of 2023 and C.W.J.C. No. 3736 of 2024 has contended that the Waqf Board through its Resolution no.2 dated 14.08.2010 as well as Resolution No. 26 dated 21.05.2014 had approved the proposal for the payment of pension to its employees in the light of the provision contained in Clause 25 of the Bihar Waqf Regulation, 2009. The Central Waqf Council had taken note of the pitiable condition of the employees of the Waqf Board vide its letter no. 45 dated 14.08.2018 directed to all the Chief Executive Officers for immediate implementation of the pension scheme for the employees or dependent of the State Waqf Board as recommended in 9th Joint Parliamentary Committee. The Waqf Board in its meeting dated 12.09.2018 has considered the matter in the light of the aforesaid resolution and directed to ensure compliance and implementation of the pension scheme. Finally the Bihar State Shia Waqf Board in its meeting dated 26.10.2018 has resolved to implement the monthly pension scheme to its employees or dependent family members at par with the State Government employees. It is further contended that nonetheless, the matter for extending the pension stands resolved, surprisingly Waqf Board through its



Resolution No. 1985 dated 08.07.2019 issued under the signature of Chief Executive Officer, Bihar State Sunni Waqf Board came out with a rigor that the pension/family pension shall be extended to the regular employees, who were appointed prior to 01.09.2005 and the same will be implemented w.e.f. 26.06.2019.

5. Aggrieved with the irrational cut off date of extending benefit w.e.f. 26.06.2019, the petitioners Nusrat Jahan @ N. Jahan and Md. Sami Ahmad of C.W.J.C. No. 3736 of 2024 had preferred C.W.J.C. No. 3605 of 2020, which writ petition was allowed and disposed of vide order dated 15.12.2022 setting aside the part of the Resolution no.40 dated 26.06.2019 whereby it was made effective with effect from 26.06.2019. The matter was remitted to the Sunni Waqf Board to consider the claim of the petitioners of the said case for grant of pension/family pension, as has been granted to other similarly situated persons.

6. The respondent Waqf Board to utter disregard of the order of this Court while considering the claim of the aforementioned petitioners stayed the operation of Resolution no.40 dated 26.09.2019 in its meeting dated 30.01.2023 vide Resolution dated 23.01.2023 and communicated to the Principal



Secretary, Minority Welfare Department, Government of Bihar for issuing guidelines. In response to the request of the Sunni Waqf Board, the Joint Secretary-cum-Director Minority Welfare Department, Government of Bihar issued order as contained in Memo No. 2365 dated 04.09.2023, which is impugned herein, whereby it has been informed to Waqf Board(s) that in absence of provision of payment of pension, the employees of the Waqf Board are not entitled to get pension/family pension at par with the employees of the State Government.

7. While assailing the impugned order, Mr. Rashid Izhar, learned Advocate for the petitioners submitted that the impugned Memo No. 2365 is in the teeth of the order passed by this Court in various cases; One Md. Nayeemuddin, a retired employee of the Waqf Board filed CWJC No. 19799 of 2011 for grant of monthly pension and other retiral dues, which writ petition came to be disposed of by a Bench of this Court on 17.12.2014 with a specific finding that the Board cannot deny payment of pensionary benefits to the petitioner on the ground that it does not have sufficient fund for such payment. The respondent State authorities have completely failed to take note of the direction of the Central Waqf Council for immediate payment of pension/family pension to the employees of the



State Waqf Board.

8. Md. Kamal Ashraf, learned Advocate representing the petitioner in C.W.J.C. No. 12261 of 2023 has further argued that Central Waqf Council, Ministry of Minority Affairs, Government of India through its letter dated 14.08.2018 has directed for immediate implementation of the pension scheme for the employees/dependents of State Waqf Board, as recommended in the 9th Joint Parliamentary Committee. Placing the copy of the discussions of the Joint Parliamentary Committee, efforts have been made to impress upon the Court that Central Waqf Council was authorized to issue direction which would be binding to the State Waqf Board and the State Government. The Central Waqf Council has also taken note of the fact the State of Bihar did not bother to follow the provision of the Act and till the date regulations have yet not been prepared. The Central Waqf Council being authorized to issue direction, have directed all the Chief Executive Officers of the Waqf Board for immediate implementation of pension scheme; and once it was directed to implement the pension scheme for the employees of the Waqf Board, the Sunni Waqf Board has rightly been taken a decision to extend the benefit of pension scheme.



9. It is also submitted that in similar circumstances, Shia Waqf Board has taken a decision to give pension/family pension to its employee at par with the employees of the State Government, but when discrimination has been caused, some of the aggrieved persons approached this Court and when in the case of some of the employees, suitable orders have been passed and have been allowed pensionary benefits, the State Government without having any justifiable reason by issuing the impugned order that snatched away the rights and entitlement of the petitioners and other identically situated employees. Heavy reliance has been placed on a judgment rendered in the case of **Sant Ram Sharma Vs. State of Rajasthan & Ors.**, reported in **AIR 1967 SC 1910**, **Abraham Jacob & Ors. Vs. Union of India**, reported in **(1998) 4 SCC 65**, **Union of India & Anr. Vs. Central Electrical & Mechanical Engineering Services (Ce&Mes) Group 'A' (Direct Recruits) Assn., CPWD**, reported in, **(2008) 1 SCC 354**, **Paluru Ramkrishnaiah & Ors. Vs. Union of India & Anr.** reported in **(1989) 2 SCC 541**, **Union of India & Ors. Vs. Rakesh Kumar**, reported in **(2001) 3 Supreme 48**. **The Employees' State Insurance Corporation Vs. Union of India & Ors.**, (Civil Appeal No. 152 of 2022) and **Tej Prakash Pathak & Ors. Vs. Rajasthan High Court &**



Ors., reported in (2013) 4 SCC 540.

10. Referring to the decisions aforementioned, it is vehemently submitted that in absence of legislative rules, it was competent to the Waqf Board and State Government to take a decision and issue necessary order or administrative instructions to fill up the gaps and supplement the statutory rules. In any view of the matter, extending the benefits of pension to the employees of the Waqf Board is said to be sub-serving to the statutory provisions. Even if there is no rules or the rules are silent on the subject, administrative instructions may be issued to supplement the statutory rules. In that even, the administrative instruction govern the filed provided till they are not ultra vires of the provisions of Rules or Statutes or the Constitution, is the contention of the learned Advocate.

11. It is lastly contended that the respondent Waqf Board has not placed the correct facts and on many occasion has tried to mislead the Court by giving incorrect projection of the facts.

12. Refuting the aforesaid contention, Mr. Helal Ahmad, learned Advocate for the Sunni Waqf Board has candidly urged that the very claim of the petitioners is misconceived in law as well as on facts. Till date, the Bihar



Waqf Regulation, 2009 or any amended regulation has not been published in the official Gazette of Government of Bihar and thus never came into force. It is specifically contended that the Waqf Board in its meeting held on 30.01.2023 has considered the matter of pension/family pension to its employees and finally referred the entire matter to the State Government for approval, as the same was done without approval of the State Government; In the meanwhile Resolution No. 40 dated 26.09.2019 passed by the Waqf Board has been stayed. The decision of the Waqf Board was further communicated to the Principal Secretary, Minority Welfare Department, Government of Bihar. In response to the query and the guidelines sought for by the Waqf Board, the Joint Secretary-cum-Director of Minority Welfare Department, Government of Bihar has communicated to the Waqf Board that the employees of the Board were not entitled to pension/family pension at par with the employees of the State Government. Reliance has also been placed on the decision of the Apex Court in the case of **State of Orissa & Anr. Vs. Orissa Khadi and Village Industries Board Karmachari Sangha & Anr.**, reported in, **2023 SCC OnLine SC 281** wherein the Court held that in absence of any provision in the Regulation, Board Employees cannot claim



benefits of pension/family pension.

13. Taking this Court through the Bihar State Sunni Waqf Regulation, 1973, it is further contended that there is no provision for pension/family pension, hence the employees of the Waqf Board, whose services and service conditions are governed under the Waqf Act, 1995 and the Regulation made therein are not entitled to pension/family pension.

14. Mr. Yatindra Narayan, learned Advocate for the State representing the answering respondent nos. 1 and 2 has taken this Court through the counter affidavit filed on their behalf of answering respondent nos. 1 and submitted that in response to the guidelines sought for by the Waqf Board, legal opinion was sought for by the answering respondent and finally the respondents came to the decision that there is no provision or scheme for payment of pension/family pension to the retired employees of Waqf Board. The employees of the State of Bihar is being governed by the Bihar Service Code and allied guidelines as well as Bihar Pension Rules, 1950 whereas the employees of the Waqf Board is governed by the Waqf Act, 1995 and the Rules, hence the services of the employees of the Waqf Board is not at par with the services of the employees of State Government. The reliance of the petitioners on any of the



provisions of the proposed Bihar Waqf Regulation, either 2009 or any amended regulation has never been come into force.

15. The contentions of the petitioners have also been denied that till date, the monthly pension scheme of the Shia Waqf Board has been approved by the State Government. Further, to oppose the reliefs prayed for in the writ petition, reliance has also been placed on a decision rendered by the Apex Court in the case of **Orissa Khadi and Village Industries Board Karmachari Sangha & Anr.** (supra) that the issue has already been set at rest that the employees are not entitled to get pension/family pension in absence of any Regulation for payment of the same.

16. This Court has anxiously heard to all the learned counsel for the respective parties and also perused the materials available on record meticulously.

17. To sustain a claim for pension, the employee(s) have to first establish his lawful entitlement to prefer such claim. The entitlement might be dependent upon various consideration or conditions. The right to receive pension emanates and dependent upon the service condition of an employee, which is being governed under the statutory Rules and Regulation. To examine the claim of the petitioners, it



would be incumbent upon this Court to consider the necessary statutory prescriptions of the Acts and the Regulations, which governs the service condition of the petitioners.

18. Section 24 of the Waqf Act, 1995 talks about the Officers and other employees of the Board and it reads as follows:

“(1) The Board shall have the assistance of such number of officers and other employees as may be necessary for the efficient performance of its functions under this Act, details thereof shall be determined by the Board in consultation with the State Government.

(2) The appointment of officers and other employees, their term of office and conditions of service shall be such as may be provided by regulations.”

19. The aforesaid statutory prescriptions clearly prescribes that the Waqf Board has extended the power to make Regulation, inter alia, in respect to and terms and condition of its Officers and other employees of the Waqf Board. Further Section 110(1) of the Waqf Act clearly stipulates that the Board may, with previous sanction of the State Government, make regulations not inconsistent with this Act or the rules made thereunder, for carrying out its functions under this Act. Section



110(2)(e), inter alia provides that such regulation shall be with respect to all or any of the matter, including the terms and conditions of service of the officers and other employees of the Board under sub-section (2) of section 24.

20. From the reading of the aforementioned provisions, it would be evident that the terms and conditions of service of the officers and other employees of the Board shall be regulated by Regulation, which has to be duly sanctioned by the State Government. The Regulation, 1974, which is enforced at present, has neither any provision nor any scheme for grant of pension/family pension.

21. It is not in dispute that except the Bihar Waqf Regulation, 1974, there is no other Regulation either 2009 or the State Government as per the terms of the prescription prescribed under Section 110(1) of the Waqf Act, 1995. The reliance of the petitioners on any of the prescriptions of the proposed Regulation, which is yet to receive the sanction, cannot strengthen the claim of the petitioners.

22. Section 9 of the Waqf Act, 1995 talks about the Establishment and constitution of Central Waqf Council. The very establishment and Constitution of Central Waqf Council is for the purpose of advising the Central Government, the State



Governments and the Boards on matters concerning the working of Boards and the due administration of Waqf, hence without any reservation to accept that any direction of the Central Waqf Council is advisory in nature.

23. The next point for consideration is as to whether the service conditions of the employees, in absence of statutory rule could be governed by the Administrative instructions; there is no confrontation to the legal proposition. It is now well settled principle of law that undoubtedly where there are no rules or where the rules are silent on the subject, administrative instructions must be issued to supplement and fill up the gaps of the rules. In the case of **Sant Ram Sharma** (supra), the Constitution Bench of the Hon'ble Supreme Court while clarifying the aforementioned position has categorically held, "It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

24. In the case of **Central Electrical & Mechanical Engineering Service** (supra) the Hon'ble Supreme Court held that it is now a well settled principle of law that an



executive order must be passed in conformity with the Rules. Power of the State Government to issue executive instructions is confined to filling up of the gaps or covering the area which otherwise has not been covered by the existing Rules.

25. In the case of **Dhananjay Malik & Ors vs State of Uttaranchal & Ors.** reported in, **2008 (4) SCC 171**, the Hon'ble Supreme Court while responding to the question as to whether the Government can fill up the gaps by supplementing the rules by way of administrative instructions, has reiterated the Constitution Bench decision in the case of **Sant Ram Sharma** (supra) and held in para. 15 as follows:

15. The aforesaid ruling has been reiterated in para 9 of the judgment by a three-Judge Bench of this Court in *Union of India v. K.P. Joseph* [(1973) 1 SCC 194 : 1973 SCC (L&S) 133] as under: (SCC p. 196)

“9. Generally speaking, an administrative order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This Court has held in *Sant Ram Sharma v. State of Rajasthan* [Arising out of SLP (C) No. 7989 of 2006] that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under



Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service.”

26. Recently in the case of **Tej Prakash Pathak Vs. High Court of Rajasthan, (2025) 2 SCC 1**, the Hon’ble Supreme Court while clarifying the subject/issue held that “there can therefore be no doubt that where there are no Rules or the Rules are silent on the subject, administrative instructions may be issued to supplement and fill in the gaps in the Rules. In that event administrative instructions would govern the field provided they are not ultra vires the provisions of the Rules or the Statute or the Constitution. But where the Rules expressly or impliedly cover the field, the recruiting body would have to abide by the Rules”. The Court further held that the extant Rules, which was the subject matter in the aforesaid case, having statutory force are binding on the recruiting body both in terms of procedure and eligibility. Thus, the law already stands crystallized that where the Rules are non-existent, or silent, administrative instructions may fill in the gaps.

27. In the light of the discussions, now coming to



the case in hand as to whether the decisions taken or any letter issued by the Waqf Board can be termed as Executive or administrative instruction.

28. Answering the aforementioned question, it would be pertinent to remind the decision of the Apex Court in the case of **B.K. Srinivasan & Others Vs. State of Karnataka & Ors.**, reported in (1987) 1 SCC 658. It would be worth encapsulating the relevant extract of para.15 of the said decision.

“15. There can be no doubt about the proposition that where a law, whether parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the “conscientious good man” seeking to abide by the law or from the standpoint of Justice Holmes's “unconscientious bad man” seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known. We know that delegated or subordinate legislation is all-pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by parliamentary legislation. But unlike parliamentary legislation



which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient [*Narayana Reddy v. State of A.P.*, (1969) 1 Andh WR 77].”



29. In the case of **Gulf Goans Hotels Co. Ltd. & Anr vs Union of India & Ors.**, reported in, **(2014) 10 SCC 673**, the Hon'ble Supreme Court reminded that it is also essential that what is claimed to be a law must be notified or made public in order to bind the citizen. The Court further observed that it will not be necessary to notice the long line of decisions reiterating the aforesaid view. So far as the mode of publication is concerned, it has been consistently held by this Court that such mode must be as prescribed by the statute. In the event the statute does not contain any prescription and even under the subordinate legislation there is silence in the matter, the legislation will take effect only when it is published through the customarily recognized official channel, namely, the official gazette.

30. It is basic principle of law, long settled, that if the manner of doing, a particular act is prescribed under any Statute, the Act must be done in that manner or not at all.

31. It would also be pertinent to emphasize here that the doctrine of ultra vires envisages that a Rule making body must function within the purview of the Rule making authority, conferred on it by the parent Act. As the body making Rules or Regulations has no inherent power of its own to make



rules, but derives such power only from the statute, it must necessarily function within the purview of the statute. Even if delegated legislation should not travel beyond the purview of the parent Act.

32. In view of the settled legal proposition and the facts that till date the proposed Regulation has not received the sanction of law and/or published in the official gazette, any reliance to claim the pension/family pension is not at all permissible in the law. The decision of the Waqf Board or any order issued in this behalf is *per se* cannot be said to be administrative and executive instruction and has no force of law in absence of any provision in the instant Regulations and the prescription of the Act, 1995.

33. Now coming to the decision of **Orissa Khadi and Village Industries Board Karmachari Sangha** (supra), which was an appeal directed against the judgment and order whereby the Division Bench of High Court of Orissa has dismissed the intra-court appeal filed by the appellant State of Orissa and has affirmed the order of the learned Single Judge of the High Court, holding the employees of the Orissa Khadi and Village Industries Board entitled to pension at par with the Government employees and also directing the State Government



to amend the applicable regulations accordingly. The Hon'ble Supreme Court while allowing the appeal has held that even when the State has established the Board to carry out its obligations in terms of Article 43 of the Constitution of India, it cannot follow as a corollary that the employees of this body corporate have to be treated as State Government employees in all respects. Such a corollary proposition would practically amount to merging of the Board with the State Government; rather making it as one of the Departments of the Government. This, in the face of existing statute, cannot be done. That being the position and when Regulations in question specifically make a distinct provision as regards retiral benefits, the same cannot be ignored by any stretch of arguments.

34. While setting aside the decisions rendered by the High Court of Orissa, the Hon'ble Supreme Court has clarified that the observations in the impugned judgment and order dated 20.12.2012 as also the contentions urged on behalf of the respondents, seeking to put the employees of the Board at par with the employees of the State Government for all purposes, carry their own shortcomings. Even if Orissa Khadi and Village Industries Board has been established under an enactment of the State and for several relevant factors, it could



be considered to be an instrumentality of the State, its distinct characteristic of being a Board established with particular aim and objective cannot be ignored altogether. The Board being a body corporate, incorporated by its name, has been established to carry out the purposes of the Act of 1955 and not beyond. In view of its independent corporate entity and existence, the provisions have been made in the Act of 1955 for making regulations by the Board consistent with the Act of 1955 and rules made thereunder with the previous sanction of the State Government, where the Regulations could provide, inter alia, for remuneration, allowances and other conditions of service of the staff of the Board (vide Section 36 of the Act). The Regulations of 1960 were framed accordingly. Therein, even while otherwise applying a substantial part of the Rules in the Orissa Service Code mutatis mutandis to the employees of the Board, Regulation 40 itself starts with a clause of exception, making that provision subject to the other provisions of the Regulations. Then, in Regulation 52 it has specifically been provided that the employees of the Board shall not be entitled to any pension except gratuity and CPF benefits; and further provisions have been made for the purpose of subscription/contribution to CPF.



35. The Hon'ble Supreme Court further also negated the contention of the respondent employees that a small number of affected employees may not bring as much financial burden on the State, and hardly make out a case for issuing a mandamus to the State to amend the Regulations. Whether to amend the Regulations or not, in the scheme of Act of 1955 as also the Regulations of 1960, is required to be left to the State and for that matter, the number of employees to be affected/benefitted is not of much relevance. The Hon'ble Supreme Court finally observed that irrespective of the observations and irrespective of the result of the litigation, nothing would prevent the State Government to carry out the amendment in the form suggested or in any other modified form, if the State Government would be willing to do so. The only question in the present appeal is as to whether a mandamus could have been issued to the State to carry out amendment. The Hon'ble Supreme Court finally held that the answer could only be in the negative.

36. Before parting with the case, it would also be pertinent to observe that the contention of the petitioners that at some instances, some of the employees have been accorded pensionary benefits have not persuaded this Court in any



manner. Merely, because the benefit has been wrongly granted to another employee that by itself shall not entitle another employees to similar benefits.

37. Well settled it is that there is no negative equality; benefit conferred without legal basis cannot be relied upon as a principle of parity.

38. In view of the discussions made hereinabove in the premise of the settled legal position, this Court does not find any merit in all the writ petitions. Accordingly, all the writ petitions are hereby dismissed.

39. The parties shall bear their own cost.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.06.2025
Transmission Date	NA

