

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13495 of 2008

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Harishankar Prasad son of Late Damodar Lal, R/o vilalge and P.O.-
Kulharia via Churamanpur, P.S.- Muffasil Buxar, District- Buxar.

... .. Petitioner/s

Versus

- 1.The State of Bihar
- 2.The Secretary, Food, Supply and Commerce Department Government of Bihar.
3. Managing Director, Bihar State Food and Civil Supplied Corporation, Patna.
4. District Magistrate, Siwan.
5. President District Consumer Forum, Siwan.
6. District Supply Officer -cum- Secretary, District Consumer Forum, Siwan.
7. Accountant General (A&E) II Bihar Birchand Patel Marg, Patna.
8. Accounts Officer, Section 8 (Pension) of the office of the A.G. Bihar (A &E) Bihar, Birchand Patel Marg, Patna.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 9006 of 2016

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Md. Mustafa Salik son of Md. Sayeed permanent resident of Village + Post
Office + Police Station - Basopatti, District - Madhubani (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
3. The Joint Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
4. The President, District Consumer Protection Forum, Madhubani.
5. The Collector, Madhubani.
6. The Bihar State Food and Civil Supplies Corporation Limited through its Managing Director, Khadya Bhawan, Daroga Prasad Rai Path, Near Bihar State Consumer Commission, Patna - 800001.
7. The Accountant General, Bihar, Birchand Patel Path, Near R.Block, Patna.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 2114 of 2010

=====

Mohan Singh S/O Late Nandan Singh R/O Vill Sihma
Kalyan,P.O.Manganpur,P.S.Bhagwanpur,Distt-Vaishali

... .. Petitioner/S

Versus



1. The State Of Bihar Through The Chief Secretary Bihar,Patna
2. The Commissioner -Cum-Secretary,Food Supply And Commercial Department Govt. Of Bihar, Patna
3. The Principal Secretary,Department Of Food And Consumer Protection Govt. Of Bihar
4. The Director,Food Supply And Commercial Govt.Of Bihar,Patna
5. The Commissioner -CUM-SECRETARY,FINANCE Department Govt. Of Bihar,Patna
6. The Joint Secretary To The Government Of Bihar,Patna
7. The Accountant General (A And E)11 Bihar,Patna
8. The District Magistrate Muzaffarpur
9. The chairman ,district consumer forum muzaffarpur

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 2454 of 2010

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Lal Babu Choudhary S/O Late Jai Ram Choudhary R/O Vill- Yusufpur (North-East Chourasia Chowk) P.O And P.S- Industrial Area Hazipur, Distt- Vaishali

... .. Petitioner/s

Versus

1. The State of Bihar Through The Chief Secretary, Bihar, Patna
2. The Commissioner-Cum-Secretary, Food Supply And Commercial Department, Govt.Of Bihar, Patna
3. The Principal Secretary, Department Of Food And Consumer Protection, Govt. Of Bihar, Patna
4. The Commissioner-Cum-Secretary, Finance Deptt. Govt. Of Bihar, Patna
5. The Joint Secretary To The Government Of Bihar Patna
6. The Secretary, State Commission Consumer Protection, Serpentine Road, Patna
7. The Accountant General, Bihar, Patna
8. The Chairman, District Consumer Forum, Vaishali
9. The District Magistrate, Vaishali

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 15106 of 2016

=====

Prabhakar Jha son of Late Mahavir Jha permanent resident of Village + P.O. - Phent, Police Station - Basopatti, District - Madhubani, at present resident of Mohalla - Vidyapati Nagar (Chakdah), South of D.N.Y. College, Police Station - Rajnagar, Post Office - Madhubani H.P.O. District - Madhubani, Pin - 847211 (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar.

- 2. The Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
- 3. The Joint Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
- 4. The Deputy Secretary, Department of Food, Supply and Commerce, Government of Bihar, Patna.
- 5. The President, District Consumer Protection Forum, Madhubani.
- 6. The Collector, Madhubani.
- 7. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Bir Chand Patel Path, Patna.
- 8. The Accountant General, Bihar, Birchand Patel Path, near R.Block, Patna.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 15152 of 2016

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Ashok Kumar Jha son of Ambika Prasad Jha present resident of Village+P.O.- Kakraul, Via- Rahika, Police Station- Rahika, District- Madhubani (Bihar).

... .. Petitioner/s

Versus

- 1. The State of Bihar.
- 2. The Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
- 3. The Joint Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
- 4. The Deputy Secretary, Department of Food, Supply and Commerce, Government of Bihar, Patna.
- 5. The President, District Consumer Protection Forum, Madhubani.
- 6. The Collector, Madhubani.
- 7. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Bir Chand Patel Path, Patna.
- 8. The Accountant General, Bihar, Birchand Patel Path, near R. Block, Patna.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 15043 of 2016

=====

Randhir Singh, son of Late Rajeshwar Prasad Singh, resident of Village- Parsa, Police Station- Rajnagar, Post Office- Rampatti, District- Madhubani- 847236 (Bihar).

... .. Petitioner/s

Versus

- 1. The State of Bihar
- 2. The Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna

- 3. The Joint Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna
- 4. The Deputy Secretary, Department of Food, Supply and Commerce, Government of Bihar, Patna.
- 5. The President, District Consumer Protection Forum, Madhubani.
- 6. The Collector, Madhubani.
- 7. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Bir Chand Patel Path, Patna.
- 8. The Accountant General, Bihar, Beerchand Patel Path, near R. Block, Patna.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 13408 of 2010

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- 1. Baleshwar Thakur S/O Late Mahavir Thakur R/O Vill & P.O.Ulao, P.S. Begusarai(Mufassil), O.P.Singhaul, Distt-Begusarai
- 2. Md.Hassan S/O Late Md. Ismail R/O Vill Lalpur, P.S.Matihani, Distt-Begusarai

... .. Petitioner/s

Versus

- 1. The State Of Bihar
- 2. The Chief Secretary Null Government Of Bihar, Patna
- 3. The Commissioner-Cum-Secretary, Department Of Personnel & Administrative Reforms Govt. Of Bihar, Patna
- 4. The Commissioner-Cum-Secretary, Finance Department Govt. Of Bihar, Patna
- 5. The Secretary, Food &Consumer Protection Department Govt. Of Bihar, Patna
- 6. The Joint Secretary, Food &Consumer Protection Department Govt. Of Bihar, Patna
- 7. The Managing Director, Bihar State Food & Civil Supplies Corporation Ltd Sone Bhawan, Birchand Patel Marg, Patna
- 8. The District Magistrate Begusarai
- 9. The President , District Consumer Forum Begusarai
- 10. The Accountant General Bihar, Patna

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 13490 of 2010

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Ramesh Kumar Yadav S/o Ram Lakhan Rai R/O Moh Goriya Toli, Behind Shanti Bhawan, P.S.Kotwali, Distt-Patna

... .. Petitioner/s

Versus



1. The State Of Bihar Through Principal Secretary Agriculture Department Government Of Bihar, New Secretariat, Vikash Bhawan, Patna
2. The Bihar State Agriculture Marketing Board Through Its Administrator Pant Bhawan, Baily Road, Patna
3. The Administrator Bihar State Agriculture Marketing Board, Pant Bhawan, Patna
4. Under Secretary, Bihar State Agriculture Marketing Board Pant Bhawan, Patna

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 19189 of 2017

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Ramdeo Paswan, Son of Baldeo Paswan, Resident of Purkhopati, Post Office-Laheriasarai, Police Station-Darbhangha Sadar, District-Darbhangha.

... ... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary Government of Bihar, Old Secretariat, Patna.
2. The Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
3. The Deputy Secretary, Department of Food Supply and Commerce, Government of Bihar, Patna.
4. The president, District Consumerprotection Forum, Darbhanga.
5. The Collector, Darbhanga.
6. The Managing Director, BiharState Food and Civil Supplies Corporation Limited, Khadya Bhawan, Daroga Prasad Rai Path, Patna.
7. The Accountant General Bihar, Birchand Patel Path, near R. Block, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 19262 of 2017

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Nagendra Kumar Sinha, Son of Braj Kishore Prasad, resident of Mohalla-Laxmi Sagar colony, Post + Police Station- Darbhanga, District-Darbhangha.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
3. The Deputy Secretary, Department of Food, Supply and Commerce, Government of Bihar, Patna.
4. Thr President, District Consumer Protection Forum, Darbhanga.
5. The Collector, Darbhanga.

6. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Bir Chand Patel Path, Patna.
7. The Accountant General, Bihar, Birchand Patel Path, near R. Block, Patna.

... ... Respondent/s

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- *Common question of law and facts for consideration - Whether all the employees who were serving with the Corporation are entitled to the pension / pensionary benefits considering / counting for the period prior to their absorption in the State Government on humanitarian ground- Petitions - referred to the Full Bench - by the learned Single Judge vide order dated 22.04.2013 passed in C.W.J.C. No. 13495 of 2008 and other allied writ petitions - two sets of judgments of this Court taking different views - one in the case of Prem Prakash Vrs. State of Bihar and Ors. reported in 2000 (3) All PLR 313; Md. Leiaquat Vrs. State of Bihar reported in 2009 (3) PLJR 300; the decision of the Division Bench of this Court dated 12.02.2014 in L.P.A. No. 154 of 2004 in the case of Kamal Bansh Narain Singh Vrs. State of Bihar and Ors. and on the other hand, the decisions of this Court in the case of Bindeshwari Prasad Ambastha Vrs. State of Bihar reported in 1998 (1) PLJR 740; Secretary, Finance (National Savings) Department Vrs. Vinod Kumar reported in 2006 (1) PLJR 269 (D.B.); Girija Devi Vrs. State of Bihar reported in 2010 (1) PLJR 495, the decision of the Division Bench of this Court in L.P.A. No. 920 of 2002 in the case of Mahendra Ram Vrs. State of Bihar & Ors. and the decision in the case of Jayant Kumar Lahiri Vrs. State of Bihar reported in 2013 (1) PLJR 173.*

(Para- 10, 13,14)

- *Question for consideration - with respect to the services rendered by the concerned employees with the Corporation prior to their absorption in*

the State Government for the purpose of retirement benefits/pensionary benefits etc - All the retired employees-writ petitioners - employees of the Bihar State Food and Civil Supplies - Corporation (hereinafter referred to as the 'Corporation') - a private limited company having its own memorandum of association – liquidation of the said Corporation - a policy decision was taken to absorb the petitioners in the Government service but, in some cases, they were absorbed in the District Consumer Forums under the Department of Food and Civil Supplies, Government of Bihar - having attained the age of superannuation, they were paid the retirement benefits on pro-rata basis and their services rendered by them in the State Government - period they have served in the Corporation was not taken into account for the purpose of pension/pensionary benefits - the respective writ petitioners have approached this Court - by way of the present writ petitions - claiming the benefit of pension/pensionary benefits also for the period they served in the Corporation - they are entitled to the full gratuity by taking into account the services rendered by them in the Corporation. (Reliance made on:- Prem Prakash (supra) Md. Leiaquat (supra) and Kamal Bansh Narain Singh (supra), Kapila Hingorani Vs. State of Bihar 2003 (6) SCC 1. they claimed that they are entitled to pensions/pensionary benefits/gratuity etc. taking into account also the services rendered by them and/or the period served in the Corporation. On the other hand, a contrary view is taken by this Court in the cases of Binideshwari Prasad Ambastha (supra), Vinod Kumar (supra), Girija Devi (supra), Mahendra Ram (supra) and Jayant Kumar Lahiri (supra) – therefore - these writ petitions are referred to the Full Bench.

(Para-1 to 4)

- *Question posed for consideration of this Court and referred to the Full Bench - is whether all the employees who were serving with the Corporation are entitled to the pension/pensionary benefits considering/counting their services rendered by them with the*

Corporation and/or for the period prior to their absorption in the State Government on humanitarian ground – held, All the writ petitioners - appointed by the Corporation - employees of the Corporation - the Corporation was having its own rules and regulations and its own Memorandum of Association - the same did not include pension scheme - Business of the Corporation - run by the Board of Directors of the Company. Merely because, the Chairman-cum- Managing Director was conducting the business, which might be required to be performed by the State Government, the employees of the Corporation shall not be entitled to all the benefits of the State Government employees, more particularly, when they were governed by an independent rules and regulations as the Corporation was having their own Memorandum of Association. Therefore, the submission on behalf of the writ petitioners that the employees of the Corporation after their absorption with the State Government shall be entitled to full pension/pensionary benefits/total gratuity counting their services rendered with the Corporation, cannot be accepted.

(Para-7-8)

- *Writ petitioners – facing retrenchment due to the closure of the Corporation - Corporation was not in a position to pay salary to its employees and, therefore, on humanitarian Ground - Policy decision taken to absorb/appoint them in the Government so that they are not rendered job less.*

(Para-9)

- *Bihar Pension Rules – Rule 58 - payment of pension/pensionary benefits by the State Government on pro-rata basis considering the services rendered by the employees with the State Government - the same is absolutely in consonance with Rules - held, Therefore, until and unless the services of the employees are under Government, such an employee shall not be entitled to the pension and/or shall not be qualified for*

pension. The services rendered by the concerned employees with the Corporation cannot be said to be the services under the Government - the State Government is justified in paying the pension/pensionary benefits on pro- rata basis considering the services rendered by the concerned employees with the State Government only. the concerned employees shall not be entitled to the pension/pensionary benefits for the services rendered by them prior to their absorption with the State Government counting their services rendered by them with the corporation as there was no pension scheme applicable to the employees of the Corporation. As observed in above, on humanitarian ground, as the Corporation was facing closure and to see that the concerned employees may not become jobless, a policy decision was taken to appoint/absorb. the concerned employees in the State Government. Therefore, if the Corporation would not have faced the closure, in that case, the concerned employees would have been continued with the Corporation and as such there was no pension scheme applicable, they would not have been given the pension while serving with the Corporation. Therefore, merely because, subsequently, they were absorbed/appointed with the State Government on humanitarian ground, they shall not be entitled to pension/pensionary benefits for the period when they were not governed by the pension scheme while serving with the Corporation.

(Para- 11 , 12)

- *Held, the respective writ petitioners being the employees of the erstwhile Corporation shall not be entitled to pension/pensionary benefits/total gratuity counting their services rendered by them with the Corporation and that the State Government is justified in paying the pension/pensionary benefits to the concerned retired employees on pro-rata basis counting their services rendered by them with the State Government only. All the writ petitions stand dismissed, accordingly.*
(Para-15)

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13495 of 2008

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Harishankar Prasad son of Late Damodar Lal, R/o vilalge and P.O.-
Kulharia via Churamanpur, P.S.- Muffasil Buxar, District- Buxar.

... .. Petitioner/s

Versus

- 1.The State of Bihar
- 2.The Secretary, Food, Supply and Commerce Department Government of Bihar.
3. Managing Director, Bihar State Food and Civil Supplied Corporation, Patna.
4. District Magistrate, Siwan.
5. President District Consumer Forum, Siwan.
6. District Supply Officer -cum- Secretary, District Consumer Forum, Siwan.
7. Accountant General (A&E) II Bihar Birchand Patel Marg, Patna.
8. Accounts Officer, Section 8 (Pension) of the office of the A.G. Bihar (A &E) Bihar, Birchand Patel Marg, Patna.

... .. Respondent/s

=====

with

Civil Writ Jurisdiction Case No. 9006 of 2016

=====

Md. Mustafa Salik son of Md. Sayeed permanent resident of Village + Post
Office + Police Station - Basopatti, District - Madhubani (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
3. The Joint Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
4. The President, District Consumer Protection Forum, Madhubani.
5. The Collector, Madhubani.
6. The Bihar State Food and Civil Supplies Corporation Limited through its Managing Director, Khadya Bhawan, Daroga Prasad Rai Path, Near Bihar State Consumer Commission, Patna - 800001.
7. The Accountant General, Bihar, Birchand Patel Path, Near R.Block, Patna.

... .. Respondent/s

=====

with

Civil Writ Jurisdiction Case No. 2114 of 2010

=====

Mohan Singh S/O Late Nandan Singh R/O Vill Sihma
Kalyan,P.O.Manganpur,P.S.Bhagwanpur,Distt-Vaishali

... .. Petitioner/S

Versus



- 1. The State Of Bihar Through The Chief Secretary Bihar,Patna
- 2. The Commissioner -Cum-Secretary,Food Supply And Commercial Department Govt. Of Bihar, Patna
- 3. The Principal Secretary,Department Of Food And Consumer Protection Govt. Of Bihar
- 4. The Director,Food Supply And Commercial Govt.Of Bihar,Patna
- 5. The Commissioner -CUM-SECRETARY,FINANCE Department Govt. Of Bihar,Patna
- 6. The Joint Secretary To The Government Of Bihar,Patna
- 7. The Accountant General (A And E)11 Bihar,Patna
- 8. The District Magistrate Muzaffarpur
- 9. The chairman ,district consumer forum muzaffarpur

... .. Respondent/s

=====

with

Civil Writ Jurisdiction Case No. 2454 of 2010

=====

Lal Babu Choudhary S/O Late Jai Ram Choudhary R/O Vill- Yusufpur (North-East Chourasia Chowk) P.O And P.S- Industrial Area Hazipur, Distt- Vaishali

... .. Petitioner/s

Versus

- 1. The State of Bihar Through The Chief Secretary, Bihar, Patna
- 2. The Commissioner-Cum-Secretary, Food Supply And Commercial Department, Govt.Of Bihar, Patna
- 3. The Principal Secretary, Department Of Food And Consumer Protection, Govt. Of Bihar, Patna
- 4. The Commissioner-Cum-Secretary, Finance Deptt. Govt. Of Bihar, Patna
- 5. The Joint Secretary To The Government Of Bihar Patna
- 6. The Secretary, State Commission Consumer Protection, Sarpentine Road, Patna
- 7. The Accountant General, Bihar, Patna
- 8. The Chairman, District Consumer Forum, Vaishali
- 9. The District Magistrate, Vaishali

... .. Respondent/s

=====

with

Civil Writ Jurisdiction Case No. 15106 of 2016

=====

Prabhakar Jha son of Late Mahavir Jha permanent resident of Village + P.O. - Phent, Police Station - Basopatti, District - Madhubani, at present resident of Mohalla - Vidyapati Nagar (Chakdah), South of D.N.Y. College, Police Station - Rajnagar, Post Office - Madhubani H.P.O. District - Madhubani, Pin - 847211 (Bihar).

... .. Petitioner/s

Versus

- 1. The State of Bihar.



- 2. The Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
- 3. The Joint Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
- 4. The Deputy Secretary, Department of Food, Supply and Commerce, Government of Bihar, Patna.
- 5. The President, District Consumer Protection Forum, Madhubani.
- 6. The Collector, Madhubani.
- 7. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Bir Chand Patel Path, Patna.
- 8. The Accountant General, Bihar, Birchand Patel Path, near R.Block, Patna.

... .. Respondent/s

=====

with

Civil Writ Jurisdiction Case No. 15152 of 2016

=====

Ashok Kumar Jha son of Ambika Prasad Jha present resident of Village+P.O.- Kakraul, Via- Rahika, Police Station- Rahika, District- Madhubani (Bihar).

... .. Petitioner/s

Versus

- 1. The State of Bihar.
- 2. The Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
- 3. The Joint Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
- 4. The Deputy Secretary, Department of Food, Supply and Commerce, Government of Bihar, Patna.
- 5. The President, District Consumer Protection Forum, Madhubani.
- 6. The Collector, Madhubani.
- 7. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Bir Chand Patel Path, Patna.
- 8. The Accountant General, Bihar, Birchand Patel Path, near R. Block, Patna.

... .. Respondent/s

=====

with

Civil Writ Jurisdiction Case No. 15043 of 2016

=====

Randhir Singh, son of Late Rajeshwar Prasad Singh, resident of Village- Parsa, Police Station- Rajnagar, Post Office- Rampatti, District- Madhubani- 847236 (Bihar).

... .. Petitioner/s

Versus

- 1. The State of Bihar
- 2. The Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna



- 3. The Joint Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna
- 4. The Deputy Secretary, Department of Food, Supply and Commerce, Government of Bihar, Patna.
- 5. The President, District Consumer Protection Forum, Madhubani.
- 6. The Collector, Madhubani.
- 7. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Bir Chand Patel Path, Patna.
- 8. The Accountant General, Bihar, Beerchand Patel Path, near R. Block, Patna.

... .. Respondent/s

=====

with

Civil Writ Jurisdiction Case No. 13408 of 2010

=====

- 1. Baleshwar Thakur S/O Late Mahavir Thakur R/O Vill & P.O.Ulao, P.S. Begusarai(Mufassil), O.P.Singhaul, Distt-Begusarai
- 2. Md.Hassan S/O Late Md. Ismail R/O Vill Lalpur, P.S.Matihani, Distt-Begusarai

... .. Petitioner/s

Versus

- 1. The State Of Bihar
- 2. The Chief Secretary Null Government Of Bihar, Patna
- 3. The Commissioner-Cum-Secretary, Department Of Personnel & Administrative Reforms Govt. Of Bihar, Patna
- 4. The Commissioner-Cum-Secretary, Finance Department Govt. Of Bihar, Patna
- 5. The Secretary, Food &Consumer Protection Department Govt. Of Bihar, Patna
- 6. The Joint Secretary, Food &Consumer Protection Department Govt. Of Bihar, Patna
- 7. The Managing Director, Bihar State Food & Civil Supplies Corporation Ltd Sone Bhawan, Birchand Patel Marg, Patna
- 8. The District Magistrate Begusarai
- 9. The President , District Consumer Forum Begusarai
- 10. The Accountant General Bihar, Patna

... .. Respondent/s

=====

with

Civil Writ Jurisdiction Case No. 13490 of 2010

=====

Ramesh Kumar Yadav S/o Ram Lakhan Rai R/O Moh Goriya Toli, Behind Shanti Bhawan, P.S.Kotwali, Distt-Patna

... .. Petitioner/s

Versus



- 1. The State Of Bihar Through Principal Secretary Agriculture Department Government Of Bihar, New Secretariat, Vikash Bhawan, Patna
- 2. The Bihar State Agriculture Marketing Board Through Its Administrator Pant Bhawan, Baily Road, Patna
- 3. The Administrator Bihar State Agriculture Marketing Board, Pant Bhawan, Patna
- 4. Under Secretary, Bihar State Agriculture Marketing Board Pant Bhawan, Patna

... .. Respondent/s

=====

with

Civil Writ Jurisdiction Case No. 19189 of 2017

=====

Ramdeo Paswan, Son of Baldeo Paswan, Resident of Purkhopati, Post Office-Laheriasarai, Police Station-Darbhangha Sadar, District-Darbhangha.

... .. Petitioner/s

Versus

- 1. The State of Bihar, through the Chief Secretary Government of Bihar, Old Secretariat, Patna.
- 2. The Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
- 3. The Deputy Secretary, Department of Food Supply and Commerce, Government of Bihar, Patna.
- 4. The president, District Consumerprotection Forum, Darbhanga.
- 5. The Collector, Darbhanga.
- 6. The Managing Director, BiharState Food and Civil Supplies Corporation Limited, Khadya Bhawan, Daroga Prasad Rai Path, Patna.
- 7. The Accountant General Bihar, Birchand Patel Path, near R. Block, Patna.

... .. Respondent/s

=====

with

Civil Writ Jurisdiction Case No. 19262 of 2017

=====

Nagendra Kumar Sinha, Son of Braj Kishore Prasad, resident of Mohalla-Laxmi Sagar colony, Post + Police Station- Darbhanga, District-Darbhangha.

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
- 2. The Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
- 3. The Deputy Secretary, Department of Food, Supply and Commerce, Government of Bihar, Patna.
- 4. Thr President, District Consumer Protection Forum, Darbhanga.
- 5. The Collector, Darbhanga.



6. The Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Sone Bhawan, Bir Chand Patel Path, Patna.
7. The Accountant General, Bihar, Birchand Patel Path, near R. Block, Patna.

... .. Respondent/s

=====

Appearance :

(In Civil Writ Jurisdiction Case No. 13495 of 2008)

For the Petitioner/s : Mr. Chandrakant, Adv.

: Mr. M.C. Gandhi, Adv.

: Mr. Navin Kumar, Adv.

For the Respondent/s : Mr. S.C-16

For the BSFC : Mr. Anjani Kumar, Sr. Adv.

: Mr. Shailendra Kumar, Adv.

For the A.G. : Mr. Arun Kumar Arun, Advocate

(In Civil Writ Jurisdiction Case No. 9006 of 2016)

For the Petitioner/s : Mr. Rajendra Lal Das, Adv.

For the Respondent/s : Mr. G.A-12

(In Civil Writ Jurisdiction Case No. 2114 of 2010)

For the Petitioner/s : Mr. Anil Kumar Sinha, Adv.

For the Respondent/s : Mr. (GA-1)

For the BSFC : Mr. Anjani Kumar, Sr. Adv.

: Mr. Shailendra Kumar Singh, Adv.

(In Civil Writ Jurisdiction Case No. 2454 of 2010)

For the Petitioner/s : Mr. Anil Kumar Sinha, Adv.

For the Respondent/s : Mr. A.A.G.-11

(In Civil Writ Jurisdiction Case No. 15106 of 2016)

For the Petitioner/s : Mr. Rajendra Lal Das, Adv.

For the Respondent/s : Mr. Arvind Ujjwal, S.C.-4

: Mr. Sushl Kumar Mallick, A.C. to SC-4

(In Civil Writ Jurisdiction Case No. 15152 of 2016)

For the Petitioner/s : Mr. Rajendra Lal Das, Adv.

For the Respondent/s : Mr. Arvind Ujjwal, S.C.-4

: Mr. Sushl Kumar Mallick, A.C. to SC-4

(In Civil Writ Jurisdiction Case No. 15043 of 2016)

For the Petitioner/s : Mr. Rajendra Lal Das, Adv.

For the Respondent/s : Mr. S. Raza Ahmad, A.A.G.-5

: Md. Kamil Akhtar, A.C. to A.A.G.-5

For the BSFC : Mr. Shailendra Kumar, Adv.

(In Civil Writ Jurisdiction Case No. 13408 of 2010)

For the Petitioner/s : Mr. Prashant Sinha, Adv.

: Mr. Bindhyachal Singh, Adv.

: Mr. Parijat Saurav, Adv.

For the Respondent/s : Mr. (A.A.G-10)

(In Civil Writ Jurisdiction Case No. 13490 of 2010)

For the Petitioner/s : Mr. Dhruba Mukherjee, Adv.

For the Respondent/s : Mr. P.K. verma, A.A.G.-3

: Mr. Saroj Kumar Sharma, A.C. to A.A.G.-3

(In Civil Writ Jurisdiction Case No. 19189 of 2017)

For the Petitioner/s : Mr. Rajendra Lal Das, Adv.

For the Respondent/s : Mr. S.Raza Ahmad -A.A.G.-5

For the BSFC : Mr. Shailendra Kumar, Adv.

(In Civil Writ Jurisdiction Case No. 19262 of 2017)

For the Petitioner/s : Mr. Rajendra Lal Das, Adv.

For the Respondent/s : Mr. Arvind Ujjwal, S.C.-4



: Mr. Sushl Kumar Mallick, A.C. to SC-4

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-11-2018

As common question of law and facts arise in these group of writ petitions, all these writ petitions are heard, decided and disposed of together by this common judgment and order.

1. At this stage, it is required to be noted that all these writ petitions are referred to the Full Bench by the learned Single Judge vide order dated 22.04.2013 passed in C.W.J.C. No. 13495 of 2008 and other allied writ petitions in view of two sets of judgments of this Court taking different views, one in the case of ***Prem Prakash Vrs. State of Bihar and Ors.*** reported in ***2000 (3) All PLR 313***; ***Md. Leiaquat Vrs. State of Bihar*** reported in ***2009 (3) PLJR 300***; the decision of the Division Bench of this Court dated 12.02.2014 in L.P.A. No. 154 of 2004 in the case of ***Kamal Bansh Narain Singh Vrs. State of Bihar and Ors.*** and on the other hand, the decisions of this Court in the case of ***Bindeshwari Prasad Ambastha***



Vrs. State of Bihar reported in **1998 (1) PLJR 740**; ***Secretary, Finance (National Savings) Department Vrs. Vinod Kumar*** reported in **2006 (1) PLJR 269 (D.B.)**; ***Girija Devi Vrs. State of Bihar*** reported in **2010 (1) PLJR 495**, the decision of the Division Bench of this Court in L.P.A. No. 920 of 2002 in the case of ***Mahendra Ram Vrs. State of Bihar & Ors.*** and the decision in the case of ***Jayant Kumar Lahiri Vrs. State of Bihar*** reported in **2013 (1) PLJR 173**.

2. The short question, which is posed for consideration of this Court and referred to the Full Court, is with respect to the services rendered by the concerned employees with the Corporation prior to their absorption in the State Government for the purpose of retirement benefits/pensionary benefits etc.

3. That all the retired employees-writ petitioners were the employees of the Bihar State Food and Civil Supplies Corporation (hereinafter referred to as the 'Corporation'). That the said Corporation-Company was a private limited company having its own memorandum of association. That when the said Corporation was under liquidation and, therefore, a policy decision was taken to absorb them in the Government service but, in some cases, they were absorbed in the District



Consumer Forums under the Department of Food and Civil Supplies, Government of Bihar. That thereafter having attained the age of superannuation, they were paid the retirement benefits on pro-rata basis and their services rendered by them in the State Government and for the period they have served in the Corporation was not taken into account for the purpose of pension/pensionary benefits. Therefore, the respective writ petitioners have approached this Court by way of the present writ petitions claiming the benefit of pension/pensionary benefits also for the period they served in the Corporation. It is their case that they are entitled to the full gratuity by taking into account the services rendered by them in the Corporation.

4. The writ petitioners have placed reliance upon the decisions of this Court in the cases of ***Prem Prakash (supra)***, ***Md. Leiaquat (supra)*** and ***Kamal Bansh Narain Singh (supra)***, and they claimed that they are entitled to pensions/pensionary benefits/ gratuity etc. taking into account also the services rendered by them and/or the period served in the Corporation. On the other hand, a contrary view is taken by this Court in the cases of ***Binideshwari Prasad Ambastha (supra)***, ***Vinod Kumar (supra)***, ***Girija Devi (supra)***, ***Mahendra Ram (supra)*** and ***Jayant Kumar Lahiri***



(*supra*) and, therefore, as observed herein above, these writ petitions are referred to the Full Bench.

5. Learned counsel appearing on behalf of the respective writ petitioners have vehemently submitted that though initially the respective writ petitioners were working with the Corporation, as the Corporation was conducting the business of procuring food grains and distributing the same which was the obligation of the State Government to provide food grains through Public Distribution System, on their subsequent absorption in the State Government, the respective writ petitioners are entitled to pension/pensionary benefits including the period during which they worked with the Corporation.

5.1. It is further submitted by the learned counsel appearing on behalf of the respective writ petitioners that even the entire share capital of the Corporation was held by the Government and the Board of Directors who was also constituted by the Government and normally, an I.A.S. officer being the Chairman -cum- Managing Director of the Corporation. All the appointments and fixation of pay scale are controlled by the Bureau of Public Enterprises. The respective writ petitioners while working with the Corporation were



required to be treated and considered as government employees and all of them are entitled to all the benefits which may be available to the government employees. Therefore, during the period under which the respective writ petitioners worked with the Corporation and subsequently, they were absorbed in the Government, the period prior to their absorption in the State Government also required to be considered/counted for the pension/pensionary benefits including the gratuity etc.

5.2. Making above submissions and relying upon the aforesaid decisions in the cases of ***Prem Prakash (supra)***, ***Md. Leiaquat (supra)*** and ***Kamal Bansh Narain Singh (supra)*** and in the case of ***Kapila Hingorani Vs. State of Bihar*** reported in ***2003 (6) SCC 1 (supra)*** and also in the case of ***Sir Nanhku Prasad Singh @ Nankhu Prasad Sinha Vs. The State of Bihar & Ors.*** reported in ***2004 (3) PLJR (HC) 769***, it is requested to allow the present writ petitions by directing the State Government to pay full pension/pensionary benefits/gratuity counting the services rendered by the respective writ petitioners with the Corporation i.e. the period of services rendered by them prior to their absorption in the State Government.



6. All these writ petitions are vehemently opposed by the State Government and heavily reliance is placed upon Rule 58 of the Bihar Pension Rules.

6.1. It is further submitted by the learned counsel appearing on behalf of the State that the Bihar State Food and Civil Supplies Corporation was an independent Corporation and a private limited company and the services of the said Corporation were governed by their own rules and regulations. It is further submitted that as such the Corporation was facing the closure and, therefore, on sympathetic consideration, a policy decision was taken to absorb the employees of the Corporation in the State Government. It is further submitted that therefore, all of them were paid pension/pensionary benefits on pro-rate basis considering/counting their services with the State Government.

6.2. It is further submitted that even in the Corporation in which the writ petitioners were serving earlier, there was no pension scheme and, therefore, the respective writ petitioners shall not be entitled to the pension/pensionary benefits for the period under which they worked with the Corporation as when they were serving with the Corporation, there was no pension scheme. It is further



submitted that as such they were taken in the State Government on humanitarian ground as the Corporation was facing closure. It is submitted that if the Corporation was not facing the closure, in that case, all the employees would have been continued with the Corporation and therefore, they were not entitled to any pension/pensionary benefits as there was no pension scheme applicable.

6.3. It is further submitted by the learned counsel appearing on behalf of the State that even the State Government declared a circular instead of retrenching them, all of them were appointed/accommodated in the State Government and it was a fresh appointment with the State Government after inviting the applications. It is further submitted that therefore, the State Government has rightly granted the pension/pensionary benefits on pro-rata basis considering the services with the State Government, more particularly, considering the Rule 58 of the Bihar Pension Rules.

6.4. Learned counsel appearing on behalf of the State has heavily relied upon the aforesaid decisions in the cases of ***Bindeshwari Prasad Ambastha (supra), Vinod Kumar***



(supra), Girija Devi (supra), Mahendra Ram (supra) and Jayant Kumar Lahiri (supra).

7. Heard learned counsel appearing on behalf of the respective parties at length. As noted herein above, the short question, which is posed for consideration of this Court and referred to the Full Bench, is whether all the employees who were serving with the Corporation are entitled to the pension/pensionary benefits considering/counting their services rendered by them with the Corporation and/or for the period prior to their absorption in the State Government on humanitarian ground.

8. It is required to be noted that all the writ petitioners were appointed by the Corporation and they were the employees of the Corporation and the Corporation was having its own rules and regulations and the same did not include pension scheme. The Corporation was also having its own Memorandum of Association. The business of the Corporation was run by the Board of Directors of the Company. Merely because, the Chairman-cum- Managing Director was conducting the business, which might be required to be performed by the State Government, the employees of the Corporation shall not be entitled to all the benefits of the State



Government employees, more particularly, when they were governed by an independent rules and regulations as the Corporation was having their own Memorandum of Association. Therefore, the submission on behalf of the writ petitioners that the employees of the Corporation after their absorption with the State Government shall be entitled to full pension/pensionary benefits/total gratuity counting their services rendered with the Corporation, cannot be accepted on the aforesaid ground.

9. It is required to be noted that in fact, all the writ petitioners were facing retrenchment due to the closure of the Corporation and even the Corporation was not in a position to pay salary to its employees and, therefore, on humanitarian ground, a policy decision was taken to absorb/appoint them in the Government so that they are not rendered job less.

10. Now, so far as reliance placed upon the decision of the Hon'ble Supreme Court in the case of ***Kapila Hingorani (supra)*** by the learned counsel appearing on behalf of the respective writ petitioners is concerned, on considering the facts of the case, the said decision shall not be applicable to the facts and circumstances of the case on hand. It was in the peculiar facts and circumstances, the Hon'ble Supreme Court



had directed the State reminding them on their moral duty to pay some salary to the employees of the Corporations who were facing financial difficulties. On the contrary in paragraph -74, the Hon'ble Supreme Court has specifically clarified that the order is not intended to lay down the law that the State is directly or vicariously liable to pay salaries/remunerations to the employees of the public sectors undertakings or the government companies in all situations. The Hon'ble Supreme Court has clarified that the order is based on humanitarian ground by observing that the State cannot escape its liability when human rights problem of such magnitude involving the starvation deaths and/or suicide by the employees has taken place by reason of non-payment of salary to the employees of public sector undertakings for such a long time. Therefore, the aforesaid decision shall not be applicable to the facts and circumstances of the case on hand, more particularly, with respect to pension/pensionary benefits as claimed for the period the writ petitioners served with the Corporation prior to their absorption with the State Government.

11. Now, so far as the payment of pension/pensionary benefits by the State Government on pro-rata basis considering the services rendered by the employees with the State



Government is concerned, the same is absolutely in consonance with Rule 58 of the Bihar Pension Rules, which deals as under;

“58. The service of a Government servant does not qualify for pension unless ”it conforms to the following three conditions:-

First- The service must be under Government,

Second- The employment must be substantive and permanent.’

Third- the service must be paid by Government.

These three conditions are fully explained in the following sub-sections.”

Therefore, until and unless the services of the employees are under Government, such an employee shall not be entitled to the pension and/or shall not be qualified for pension. The services rendered by the concerned employees with the Corporation cannot be said to be the services under the Government. Under the circumstances, the State Government is justified in paying the pension/pensionary benefits on pro-rata basis considering the services rendered by the concerned employees with the State Government only.

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



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

13. Now, so far as reliance placed upon the decision of the learned Single Judge in the cases of *Prem Prakash (supra)* and *Md. Leiaquat (supra)* by the learned counsel appearing on behalf of the writ petitioners are concerned, for the reasons stated above, we are not in agreement with the view taken by the learned Single Judge in the aforesaid decisions. Similarly, for the reasons stated above, we are not in agreement with the



view taken in the decision in the case of *Kamal Bansh Narain (supra)*. On the contrary, there is direct decision of this Court in the case of *Vinod Kumar (supra)*, in the case of *S.A. Hasan (supra)* and the decision of the learned Single Judge in the case of *Bindeshwari Prasad Ambastha (supra)*.

14. Now, so far as the reliance placed upon the decision of the Division Bench of this Court in the case of ***Sir Nanhku Prasad Singh @ Nankhu Prasad Sinha (supra)***, by the learned counsel appearing on behalf of the writ petitioners is concerned, the same shall not be applicable to the facts of the case on hand. In the case before the Division Bench, the employee was denied the pension on the ground that he was not a permanent employee. It was also found that the employee got the employment out of the Government Department and thereafter, he was put under a public sector undertaking. It was also found that after 40 years of continued service, he could not have denied the pension as he was retired as permanent status therefore, the decision shall not be applicable to the facts and circumstances of the case on hand.

15. In view of the above and for the reasons stated above, It is held that the respective writ petitioners being the employees of the erstwhile Corporation shall not be entitled to



pension/pensionary benefits/total gratuity counting their services rendered by them with the Corporation and that the State Government is justified in paying the pension/pensionary benefits to the concerned retired employees on pro-rata basis counting their services rendered by them with the State Government only. All the writ petitions stand dismissed, accordingly.

(Mukesh R. Shah, CJ)

(Dr. Ravi Ranjan, J)

(Ashutosh Kumar, J)

Brajesh/-

AFR/NAFR	A.F.R.
CAV DATE	31.08.2018
Uploading Date	02.11.2018
Transmission Date	

