

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18826 of 2018

1. Bimal Kumar Roy, son of Late Basant Kumar Roy, resident of C/o- Surendra Prasad Roy, Gosai Tola, Police Station- Patliputra, District- Patna.
2. Akhileshwar Kumar Verma, son of Late Damodar Prasad, resident of Village- Bankat, Police Station- Barauli, District- Gopalganj.
3. Dilip Kumar Sinha, son of Late Shyam Bihari Prasad, resident of Mohalla- Pathar-ke- Maszid, Tikari Road, Devi Asthan, Moglani Bagh, Police Station- Sultanganj, District- Patna.
4. Ashok Kumar Sinha, son of Late Shyam Bihari Prasad, resident of Mohalla- Pathar-ke- Maszid, Tikari Road, Devi Asthan, Moglani Bagh, Police Station- Sultanganj, District- Patna.
5. Baban Prasad Sinha, son of Late Ishwar Lal, C/o- Maheshwar Prasad Ambastha, resident of Mohalla- Radha Krishna Colony, Road No. 1, Police Station- Beur, District- Patna.
6. Ashok Kumar, son of Jagnarayan Pandit, resident of Mohalla- Nalbandtoli (Gulzarbagh), Police Station- Alamganj, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Vishwasaraiya Bhawan, Bailey Road, Patna.
2. The Under Secretary to Government of Bihar, Road Construction Department, Vishwasaraiya Bhawan, Bailey Road, Patna.
3. The Engineer-in- Chief-cum- Additional Commissioner-cum- Special Secretary, Road Construction Department, Vishwasaraiya Bhawan, Bailey Road, Patna.
4. The Chief Engineer (South Bihar Zone), Road Construction Department, Vishwasaraiya Bhawan, Bailey Road, Patna.
5. The Additional Secretary, Personnel and Administrative Reforms Department, Government of Bihar, Patna.
6. The Superintending Engineer, Central Circle, Road Construction Department, Chhajubagh, Patna.
7. The Executive Engineer, New Capital Sub- Division, Road Construction Department, Lodipur, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ajoy Kumar Chakraborty, Advocate
For the Respondent/s : Mr.Manoj Kr.Ambastha, SC-26

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
C.A.V. JUDGMENT

Date : 17-02-2021

Six writ petitioners have filed the present writ
petition for the following reliefs:-



“(a) for issuance of writ in the nature of writ of certiorari, mandamus or any other appropriate writ or writs, order or direction commanding the respondents to consider the past services of petitioners rendered in non-Gazetted Capacity for pension and gratuity after superannuation from Government Service they discharged duties for more than 30 years, and

(b) to quash the Memo No. 6632(S) 28.08.2018 (Annexure-18) issued by the Deputy Secretary, Road Construction Department, Government of Bihar, Patna by which the order/direction dated 02.05.2018 passed by this Hon’ble Court in CWJC No. 14304 of 2015 (Annexure-15) has been misinterpreted and the respondents refused to follow the direction for payment of pension and other retiral dues to retired employees under Rule 59 of Bihar Pension Rule, 1950 including the Government decision contained in Memo No. Pen-1024/69/11779-F dated 12.08.1969 and arbitrarily and unlawfully rejected and disposed of the representation filed by the petitioners on 17.05.2018 in pursuant to Hon’ble Court’s direction dated 02.05.2018.”

2. Shorn of unnecessary details, the relevant facts, for the purposes of deciding the present writ petition, are set out below.

3. In exigency of situation when there was total ban on appointment of Classes III and IV employees, appointments were



made by the competent authorities of different Departments including the Road Construction Department on muster roll/daily wages basis on vacant sanctioned post to catre the day to day need of the administration. In between July, 1984 to December, 1984 269 persons including the petitioners were engaged on daily wage basis against the sanctioned vacant posts. They started discharging their duties in the concerned office/establishment. In February, 1992 an agreement was reached in between the daily wage/muster roll employees and the contingent employees Association and the State Government and it was agreed that those who have been appointed against sanctioned vacant post upto the cut-off date i.e. 1.8.1985 and have completed 240 days, they shall be appointed on preferential basis.

It may be relevant to mention here that agreement between employees federation and the Government has binding effect as held out by the Apex Court in the case of *State of Bihar v. Sunny Prakash, (2013) 3 SCC 559* .

The Department of Personnel and Administrative Reforms issued resolution as contained in Memo No. 5940 dated 18th June, 1993, as contained in Annexure-1. The relevant part of the resolution dated 18.6.1993, as contained in Annexure-1 is quoted below:-



“[बिहार सरकार, कार्मिक एवं प्रशासनिक सुधार विभाग, संकल्प
ज्ञाप सं0 3/एम [1&1069@88](#) (खण्ड) का0 5940, दिनांक 18 जून, 1993 की
प्रतिलिपि।]

विषय: राजकीय उपक्रमों एवं सरकार के अधीनस्थ दैनिक
वेतनभोगी कर्मचारियों को स्वीकृत रिक्त पदों पर नियुक्ति में अधिमानता दिये
जाने के संबंध में।

दैनिक वेतनभोगी, मास्टर रौल, आकस्मिक भृत्य आदि कर्मचारियों की
नियमित नियुक्ति के संबंध में विभिन्न संघों द्वारा उठाये गये माँगों पर फरवरी, 1992
में राज्य सरकार एवं अराजपत्रित कर्मचारियों के [महासंघों/समन्वय](#) समिति के साथ
निम्न समझौते हुए हैं –

“संबंधित विभाग द्वारा उनके अधीनस्थ अनुमान्य रिक्त पदों के विरुद्ध
इन वर्गों के कर्मियों को आरक्षण नियम-अर्हता, पद अनुमान्यता एवं आवश्यकता तथा
इस हेतु निर्धारित कट-ऑफ-डेट के आलोक में वरीयता पदों के विज्ञापन संबंधी
कानून का पालन करते हुए नियमित नियुक्ति हेतु विभागीय समिति निर्णय लेगी।
कार्मिक विभाग विस्तृत अनुदेश निर्गत करेगा।”

उक्त समझौते के आलोक में सम्यक् रूप से विचारोपरांत सरकार ने
निम्नलिखित निर्णय दैनिक वेतनभोगी, मास्टर रौल, आकस्मिक भृत्य आदि कर्मचारियों
(जिन्हें आगे दैनिक वेतनभोगी कर्मचारी कहा जायेगा) को स्वीकृत रिक्त पदों पर
नियमित नियुक्ति में अधिमानता दिये जाने के संबंध में लिया है—

1. राज्य सरकार द्वारा सरकारी कार्यालयों के दैनिक वेतनभोगी
कर्मचारियों को स्वीकृत रिक्त पदों पर नियुक्ति के संबंध में समय-समय पर आवश्यक
निर्देश दिये गये। यह भी निर्देश दिया गया था कि सरकारी कार्यालयों में ऐसी
नियुक्तियाँ नहीं की जाये तथा दिनांक 1.8.1985 के बाद की गयी ऐसी अनियमित
नियुक्तियों को रद्द कर दिया जाये। अतएव कट-ऑफ-डेट 1.8.1985 होगा, अर्थात्



वैसे दैनिक वेतनभोगी कर्मचारी, जो दिनांक 1.8.1985 के पूर्व से कम-से-कम 240 दिनों से कार्यरत हैं, उन्हें अन्य परिस्थितियाँ समान रहने पर नियुक्ति में अधिमानता देने पर विचार किया जाये।

2. वर्ग 3 एवं 4 की नियुक्ति के संबंध में कार्मिक एवं प्रशासनिक सुधार विभाग द्वारा समय-समय पर निर्गत परिपत्र लागू होंगे।

3. दिनांक 01.12.1991 को विभाग/क्षेत्रीय कार्यालयों के रिक्त स्वीकृत पद की जाँच कर ली जाये।

4. दिनांक 01.12.1991 को चतुर्थ वर्ग के स्वीकृत रिक्त पदों की अनुमान्यता की जाँच वित्त विभाग द्वारा निर्गत परिपत्र सं0 3110, दिनांक 10.04.1986 के आलोक में कर ली जाये।

5. स्वीकृत एवं अनुमान्य रिक्त पदों को कार्यरहित में भरना आवश्यक है या नहीं, इसे ध्यान में रखा जाये।

6. ऐसे रिक्त पदों को भरने के लिए रिक्तियों की अनवार्य अधिसूचना अधिनियम का पूर्णतः अनुपालन किया जाये।

7. संबंधित पदों पर नियुक्ति के लिए निर्धारित अर्हतायें विशेषतः न्यूनतम शैक्षणिक योग्यता एवं अनुभव का पालन किया जाये।

8. आरक्षण नियम का पूर्ण रूप से अनुपालन किया जाये।

9. उपरोक्त रूप से योग्य दैनिक वेतनभोगी कर्मचारियों की नियमित सेवा में अधिमानता में निम्नवत् समिति गठित की जाये—

- | | |
|---|----------|
| 1. विभागीय सचिव | अध्यक्ष। |
| 2. विभागाध्यक्ष | सदस्य। |
| 3. स्थापना समिति में पूर्व से अनुसूचितजाति/
जनजाति के मनोनीत प्रतिनिधि | सदस्य। |
| 4. संबंधित विभाग के स्थापना प्रभारी पदाधिकारी | सदस्य। |



10. उपरोक्त रूप से योग्य दैनिक वेतनभोगी कर्मचारियों को नियमित सेवा में अधिमानता के आधार पर वर्ग 3 एवं 4 के पद पर नियुक्ति किये जाने हेतु प्रत्येक लोग उपक्रम इकाइयों के लिए यह कार्य अध्यक्ष, लोक उद्यम ब्यूरो की अध्यक्षता में गठित निम्नांकित समिति द्वारा किया जायेगा—

- | | |
|--|----------|
| 1. अध्यक्ष, लोक उद्यम ब्यूरो | अध्यक्ष। |
| 2. संबंधित प्रशासी विभाग के सचिव | सदस्य। |
| 3. संबंधित उपक्रम के प्रबंध निदेशक | सदस्य। |
| 4. स्थापना समिति में पूर्व से अनुसूचित जाति/
जनजाति के मनोनीत सदस्य | सदस्य। |

11. उपर्युक्त समिति अपने सचिवालय, निदेशालय, संबद्ध कार्यालयों एवं क्षेत्रीय कार्यालयों से वांछित सूचनायें प्राप्त कर तथा उपर दी गयी सभी शर्तों के अनुपालन की जाँच कर रिक्त एवं अनुमान्य पदों पर योग्य दैनिक वेतनभोगी कर्मचारियों की अन्य बिन्दु समान होने पर उनकी वरीयता के आधार पर अधिमानता देने के लिए पैनल तैयार करेगा। पैनल तैयार करते समय आरक्षण के रोस्टर बिन्दु का पूर्णरूप से अनुपालन किया जायेगा। पैनल में आनेवाले ऐसे व्यक्ति की आयु यदि सरकारी सेवा में प्रवेश करने की आयु से अधिक पाई जाये तो उनके मामले में आयु सीमा को शिथिल करने के लिए विभागीय सचिव, आयुक्त या जो भी सक्षम पदाधिकारी/पदाधिकारियों को समुचित कार्रवाई हेतु संबंधित विभाग/ब्यूरो के द्वारा दी जायेगी तथा वित्त विभाग को पूर्ण सूचनाओं के साथ अवगत करायेगी।

12. 01.08.1985 के बाद नियुक्त दैनिक वेतनभोगी व्यक्तियों की सेवा समाप्त कर दी जाये। इण्डस्ट्रीयल डिस्प्यूट ऐक्ट से कोभरड कर्मचारियों की सेवा समाप्ति के संबंध में प्रावधानों का पालन करते हुए कार्रवाई की जाये।

13. उक्त व्यवस्था के कार्यान्वयन में यदि कोई कठिनाई हो तो कार्मिक एवं प्रशासनिक सुधार विभाग इस संबंध में आवश्यक निर्देश जारी करेगा।

पूर्णतः अनुपालन किया जाये।”



4. In terms of the resolution dated 18.6.1993, a Five Member High Power Committee was constituted for regularization of services/regular appointment of 239 daily wage workers along with these petitioners. The Engineer-in-Chief-cum- Additional Commissioner-cum- Special Secretary, Road Construction Department issued letter to all the Chief Engineers and Superintending Engineers for appropriate action in the matter of giving weightage to daily wage employees in the matter of appointment against sanctioned post. The name of the petitioners and others have been forwarded to the Engineer-in-Chief by the Superintending Engineer vide letter No. 115 dated 16.1.1998. Again on 15.12.2000 2nd list of 17 qualified workers were sent for regularization vide letter No. 8940 dated 15.12.2000. The Divisional Office, where the petitioners were working, forwarded the names of the petitioners vide letter No. 866 dated 26.1.2001 for regularization of the services of the petitioners. On 29.01.2002 the petitioners represented before the Superintending Engineer against the hostile discrimination meted to the petitioners in the matter of regularization in terms of the policy decision of the State Government dated 18.6.1993. On 19.2.2002 the Superintending Engineer vide letter No. 520 dated 19.02.2002, as contained in Annexure-7, after identifying the various posts admissible for



regularization, forwarded the names of the petitioners for regularization of their services.

5. By letter dated 14.6.2002, Annexure-8, the Engineer-in-Chief directed the Superintending Engineer to take appropriate decision for regularization of the services of the petitioners. The letter dated 14.6.2002 is quoted below for ready reference:-

“अभियंता प्रमुख सह अपर आयुक्त सह विभाग सचिव का कार्यालय

पथ निर्माण विभाग, बिहार पटना।

नं०-ई-4/मुकदा-111/99-2558 (E)

पटना, दिनांक-14/6/2002

प्रेषक,

वैद्यनाथ राम,

अभियंता प्रमुख, पथ निर्माण विभाग,

बिहार, पटना।

सेवा में,

अधीक्षक अभियंता,

केन्द्रीय अंचल, प० नि० वि०, पटना।

विषय:- पथ निर्माण विभाग के क्षेत्रीय कार्यालयों के अधीन दि० 1.8.85 तक 240 दिनों की लगातार सेवा करने वाले दैनिक वेतन भोगी कर्मचारियों को स्वीकृत रिक्त पदों पर नियुक्ति में अधिमानता दिये जाने के संबंध में।

महाशय,

उपर्युक्त विषयक आपके पत्रांक-520 दिनांक-19.2.2002 के प्रसंग में कहना है कि विभागीय पत्रांक-8940 (एस) अनु० दिनांक:- 15.12.2000 द्वारा अंचलान्तर्गत दिनांक 1.8.85 तक 240 दिनों की लगातार सेवा करने वाले दैनिक वेतनभोगी



कर्मचारियों को नियुक्ति में अधिमानता देने के माँग स्वीकृत किया गया है। किन्तु अभी तक किसी दैनिक वेतन भोगी कर्मचारी को नियुक्त नहीं किया गया है, जो अत्यन्त ही चिन्तनीय विषय है।

अतः अनुरोध है कि उपरोक्त विभागीय पत्रांक में निहित आदेश के आलोक में अविलंब कार्रवाई करते हुए अधोहस्ताक्षरी को अवगत कराया जाय।

विश्वासभाजन

ह0 / -अस्पष्ट

13.6.12

(वैद्यनाथ राम)

अभियंता प्रमुख, प0 नि0 वि0, बिहार, पटना।

तोपजो

11 / 6 / 02

1. 1.8.85 तक 240 दिनों की लगातार सेवा करने वाले दैनिक वेतन भोगी कर्मचारियों को
2. नियुक्ति में अधिवक्ता देने से वंचित किया गया था। परन्तु अभी तक किसी
3. भी दैनिक वेतन भोगी कर्मचारी को नियुक्त नहीं किया गया है, जो अन्य नहीं चिन्तनीय विषय है।

6. On 25.11.2002, the Deputy Secretary, Road Construction Department in his letter to the Superintending Engineer, Central Circle, Road Construction Department issued letter in connection with giving preference to those who have completed 240 days of service upto 1.8.1985 in the matter of appointment against sanctioned vacant post. The letter was issued



in the light of the letter No. 1341 dated 21.6.2002. The letter dated 25.11.2002 is quoted below for ready reference:-

“बिहार सरकार

पथ निर्माण विभाग

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पत्र सं०:-ई४ / 111 / 99 अ०नि० 9039(5)

दिनांक-25.11.02

प्रेषक,

सरकार के उप सचिव,

पथ निर्माण विभाग,

सेवा में,

अधीक्षक अभियंता,

केन्द्रीय अंचल, पथ निर्माण विभाग, पटना।

विषय:-पथ निर्माण विभाग के क्षेत्रीय कार्यालयों के अधीन दिनांक-1.8.85 तक 240 दिनों की लगातार सेवा करने वाले दैनिक वेतन भोगी कर्मचारियों को स्वीकृत रिक्त पदों पर नियुक्ति में अधिमानता दिये जाने के संबंध में।

महाशय,

उपर्युक्त विषयक आपके पत्रांक-1341 दिनांक-21.6.02 के प्रसंग में निदेशानुसार कहना है कि सरकार के आदेश के आलोक में सक्षमता के अधीन आवश्यक कार्रवाई हो। इस मामले में किसी दिशा निर्देश की आवश्यकता नहीं है।

अतः आपसे अनुरोध है कि इस मामले में त्वरित कार्रवाई करते हुए इसे कार्यालय को अवगत कराया जाय।

विश्वासभाजन
ह०/- अस्पष्ट
सरकार के उप सचिव पथ निर्माण विभाग
27-11-2002”



7. On 30.10.2013 the respondents have regularize the services of the petitioners with effect from 30.10.2013 by way of fresh appointment.

8. Unfortunately, after the policy decision of the State Government dated 18.6.1993, the respondents consumed 20 years in taking decision with regard to regularization of the services of the petitioners. In fact on 30.10.2013 notwithstanding the fact that similarly circumstanced other daily wagers appointed upto the cut-off date 1.8.1985, were regularized/ appointed on regular post much before 2002, the respondents taking advantage of their own lapses in finalizing the claim of the petitioners for regular appointment notwithstanding the fact that services of the petitioners are on the same footing like others 269 persons who were regularized/appointed on regular basis, in the services of the Road Construction Department. The petitioners approached the respondents for recognizing their past services which they rendered against the vacant sanctioned post continuously until regular appointment on 30.10.2013. They also requested for consideration of their cases for grant of pensionary benefits under the old pension scheme. The claim of the petitioners was rejected on 11.6.2015. Against that order the petitioners filed CWJC No. 14304 of 2015 which was disposed of on 2.5.2018 with a direction



to the respondents to consider the claim of the petitioners in terms of Rule 59 of the Bihar Pension Rules and Government letter No. 1024/69/1179F dated 12.08.1969. The representation filed by the petitioners was rejected by the respondents on 28.08.2018. In the aforesaid backdrop, the petitioners have once again filed the present writ petition for the reliefs quoted in para 1 of this judgment.

9. The petitioners have pleaded discrimination in the matter of regularization/regular appointment although similarly circumstanced others have been regularized/appointed on regular basis earlier but in the matter of regular appointment of the petitioners they have discriminated the petitioners and consumed 20 years. The petitioners have also enclosed the judgment of the Apex Court passed in Civil Appeal No. 1254 of 2018, Annexure-14, to contend that the Apex Court has considered the issue of recognizing past services rendered as daily wager. The relevant part of the judgment is quoted below:-

“12. It is not in dispute that the appellant has actually rendered the total service for a period of 25 years 3 months, i.e., from 01.04.1986 to 30.07.2011 to the State. It is also not in dispute that the appellant's services were regularized by the State by order dated 06.05.2008, i.e., much prior to the appellant attained the age of superannuation. It is also not in dispute



that the appellant's 25 years and 3 months period of service satisfied the rigor of the expression "continuous service" as defined under Section 2-A of the Act.

13. The submission of the learned counsel for the respondent-State was that the appellant could not be held eligible to claim the gratuity amount because out of the total period of 25 years of his service, he worked 22 years as daily wager and only 3 years as regular employee. It is for this reason, the learned counsel urged that the appellant could not be said to have worked continuously for a period of 5 years as provided under the Act so as to make him eligible to claim gratuity.

14. We do not agree with this submission of learned counsel for the respondent-State for more than one reason. First, the appellant has actually rendered the service for a period of 25 years; Second, the State actually regularized his services by passing the order dated 06.05.2008; Third, having regularized the services, the appellant became entitled to claim its benefit for counting the period of 22 years regardless of the post and the capacity on which he worked for 22 years; Fourth, no provision under the Act was brought to our notice which disentitled the appellant from claiming the gratuity and nor any provision was brought to our notice which prohibits the appellant from taking benefit of his long and continuous period of 22 years of service, which he rendered prior to his



regularization for calculating his continuous service of five years.

15. In our considered opinion, the High Court committed an error in placing reliance on the decision of this Court in Secretary, State of Karnataka & Ors. vs. Umadevi(3) & Ors., (2006) 4 SCC 1 to deny the relief of grant of gratuity to the appellant. In the case at hand, the High Court should have seen that the services of the appellant was actually regularized by the State and, therefore, the law laid down in Umadevi(supra) could not be relied on. Indeed, even the decision of Umadevi (supra) makes a distinction in cases and where the services stand regularized, the ratio of Umadevi to deny the relief would not apply.

16. In our considered opinion, once the State regularized the services of the appellant while he was in State services, the appellant became entitled to count his total period of service for claiming the gratuity amount subject to his proving continuous service of 5 years as specified under Section 2A of the Act which, in this case, the appellant has duly proved.

17. In the circumstances appearing in the case, it would be the travesty of justice, if the appellant is denied his legitimate claim of gratuity despite rendering “continuous service” for a period of 25 years which even, according to the State, were regularized. The question as to from which date such services were regularized was of no significance for



calculating the total length of service for claiming gratuity amount once the services were regularized by the State.

18. It was indeed the State who took 22 years to regularize the service of the appellant and went on taking work from the appellant on payment of a meager salary of Rs.2776/- per month for 22 long years uninterruptedly and only in the last three years, the State started paying a salary of Rs.11,107/- per month to the appellant. Having regularized the services of the appellant, the State had no justifiable reason to deny the benefit of gratuity to the appellant which was his statutory right under the Act. It being a welfare legislation meant for the benefit of the employees, who serve their employer for a long time, it is the duty of the State to voluntarily pay the gratuity amount to the appellant rather than to force the employee to approach the Court to get his genuine claim.

19. In view of the foregoing discussion, we cannot agree with the reasoning and the conclusion arrived at by the High Court which is legally unsustainable. It is really unfortunate that the genuine claim of the appellant was being denied by the State at every stage of the proceedings up to this Court and dragged him in fruitless litigation for all these years.

20. Indeed, this reminds us of the apt observations made by the Chief Justice M.C. Chagla (as he then was) in the case of Firm Kaluram Sitaram vs. The Dominion of India (AIR 1954 Bombay 50). The



learned Chief Justice in his distinctive style of writing while deciding the case between an individual citizen and the State made the following pertinent observations:

“Now, we have often had occasion to say that when the State deals with a citizen it should not ordinarily reply on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person.”

21. These observations apply in full force against the State in this case because just case of the appellant was being opposed by the State on technical grounds. As a consequence, the appeal succeeds and is allowed. Impugned judgment/order passed by the High Court (Single Judge and Division Bench) are set aside and the orders of the Controlling Authority and Appellate Authority are restored with cost of Rs.25,000/- payable by the State to the appellant. Cost to be paid by the State along with the payment of gratuity amount.

22. The respondent-State is directed to release/pay the gratuity amount as determined by the Controlling Authority within three months to the appellant.”

10. in this case the respondents have filed counter affidavit taking casual and apologetic stand, paragraphs 5 to 13 of which are quoted below:-



“5. That the present writ petition, filed by six petitioners, for issuance of payment writ, directing the respondents to consider the past service of petitioners for appropriate of pension and gratuity and quash the order issued under memo no. 6632(S) dated 28.08.2018 whereby representation, filed by the petitioners pursuant to order dated 02.05.2018 passed in CWJC No. 14304 of 2015, has been rejected.

6. That it is relevant to mention here that the petitioners were engaged on daily wages and in view of provisions made under resolution no. 639 dated 16.03.2006, issued by the Personal and Administrative Department (as than was) Govt. of Bihar the case of petitioners for regularization was considered and pursuant to recommendation made by the District Level Selection Committee, Patna they were appointed against the Class-IV posts.

7. That it is important to mention here that in view of provisions made in Clause-2(5) of Resolution No. 639 dated 16.03.2006, the period spent as daily wages employees shall not be treated as service rendered as Government Servant, therefore, the claim of petitioners that they should have been regularized with retrospective effect, as they were working as daily wages employees since 1984, cannot be taken into consideration and in this view of the matter Clause-2 was incorporated in the letter of their appointment, issued to the petitioners under Annexure-11 series to the writ petition,



wherein specific condition was incorporated at the time of their appointment that the previous service rendered by them as daily wages employees, shall not be counted for any purposes.

8. That it is important to mention here that the petitioners have raised their claim that they should be regularized pursuant to circular of 1993, as contained in Annexure-1 to the writ petition, but in fact the petitioners have been appointed against the Class-IV posts pursuant to recommendation made by the District Level Selection Committee, Patna in view of provisions made under Annexure-A of the counter affidavit therefore, their case does not come under circular of 1993, as contained in Annexure-1 to the writ petition, hence, allegation of hostile discrimination raised in different paragraphs of the writ petition is unfounded and misleading.

9. That in compliance of order dated 02.05.2018 passed in CWJC No. 14304 of 2015 the Principal Secretary, Road Construction Department considered the representation of petitioners in light of provisions of made in Clause-2(5) of Resolution No. 639 dated 16.03.2006, Rule-59 of Bihar Pension Rules and Finance Department's circular dated 12.08.1969. In the matter of provisions made under clause-2(5) of Resolution No. 639 dated 16.03.2006, opinion of General Administration Department, Govt. of Bihar was obtained and after due consideration of material available on record, including the statements



made in the representation of petitioners, the case of petitioners was rejected in view of provisions made in Clause 2(5) of Resolution No. 639 dated 16.03.2006 as the period spent as daily wages employees shall not be treated as service rendered as Government Servant. Further, in matter of applicability of Rule-59 of Bihar Pension Rules and Finance Department's circular dated 12.08.1969, opinion of Finance Department was obtained wherein the Finance Department opined that since the petitioner have worked as daily wages employees and did not held any post of regular establishment either temporarily or permanently, hence Rule-59 of Bihar Pension Rules and Finance Department's circular dated 12.08.1969 will not apply in the case of petitioners. Furthermore, in view of provisions made in the Rule 60 of Bihar Pension Rules any service rendered as Government employees will not considered for pensionary purposes until it is regularized.

10. That with regard to the statement made in para-1 of the writ petition under reply it is stated and submitted that it is a prayer made by the petitioner for redressal of their grievances hence require no comments.

11. That with regard to the statement made in para-3 of the writ petition under reply it is stated and submitted that it is A question of law which has to be decided by this Hon'ble Court hence require no comments.



12. That with regard to the statement made in paragraph no. 17 & 18 of the writ petition under reply it is respectfully stated that petitioners have been appointed against the Class-IV posts pursuant to recommendation made by the District Level Selection Committee, Patna therefore, their case does not come under Circular of 1993, as contained in Annexure-1 to the writ petition and in view of provisions made in Clause-2(5) of Resolution No. 639 dated 16.03.2006, Annexure-A of the counter Affidavit the period spent as daily wages employees shall not be treated as service rendered as Government Servant, therefore, the claim of petitioners that their past service should have been counted for, as they were working as daily wages employees since 1984, cannot be taken into consideration and in this view of the matter Clause-2 was incorporated in the letter of their appointment, issued to the petitioners under Annexure-11 Series to the writ petition, wherein specific condition was incorporated at the time of their appointment that the previous service, rendered by them as daily wages employees, shall not be counted for any purposes.

13. That with regard to the statement made in paragraph no. 20 to 24 of the writ petition under reply it is respectfully stated and submitted that in compliance of order dated 02.05.2018 passed in CWJC No. 14304 of 2015 the Principal Secretary, Road Construction Department considered the representation of petitioners in light of provisions



made in Clause-2(5) of Resolution No. 639 dated 16.03.2006, Rule 59 of Bihar Pension Rules and Finance Department's circular dated 12.08.1969. In the matter of provisions made under Clause-2(5) of Resolution No. 639 dated 16.03.2006, opinion of General Administration Department, Govt. of Bihar was also obtained and after due consideration of material available on record, including the statements made in the representation of petitioners, the case of petitioners was rejected in view of provisions made in Clause-2(5) of Resolution No. 639 dated 16.03.2006 as the period spent as daily wages employees shall not be treated as service rendered as Government Servant. Further, in the matter of applicability of Rule-59 of Bihar Pension Rules and Finance Department's circular dated 12.08.1969, opinion of Finance Department was obtained wherein in Finance Department opined that since the petitioner has worked as daily wages employees and did not held any post of regular establishment, either temporarily or permanently, hence Rule-59 of Bihar Pension Rules and Finance Department's circular dated 12.08.1969 will not apply in the case of petitioners. Furthermore, in view of provisions made in the Rule-60 of Bihar Pension Rules any service rendered as Government employees will not considered for pensionary purposes until it is regularized, hence considering all the facts, mentioned above, the representation of petitioners was considered and after due consideration it was



rejected under memo no. 6632(S) dated 28.08.2018, Annexure-18 to the writ petition, therefore, in view of above it is respectfully stated and submitted that all the allegations made in these paragraphs denied in totality and accordingly all such allegations are fit to be rejected.

11. The writ petition was heard on different dates.

On 9.6.2020 this Court had noted the submissions advanced on behalf of the petitioners and at the request of the State Counsel the case was adjourned. Again on 24.08.2020 the matter was heard, the State counsel although filed written notes of arguments and requested for listing of the case before physical Court for further assistance. The order dated 24.8.2020 is quoted below which has referred the basic issue raised in the writ petition.

“Mr. Ajay Chakraborty, learned counsel for the petitioners submits that he has not received the copy of the written notes of argument.

Mr. Manoj Ambastha, learned counsel for the State submits that this case has far reaching consequences and he has filed the written notes of argument and he has relied upon the judgment of the Full Bench of this Court reported in 2014(4) PLJR 229. However, he submits that he may be granted further liberty to assist the Court and considering the far reaching consequences of this case prays that the matter may be listed before the physical Court.



In order to facilitate the parties to have the ultimate satisfaction in the matter of assisting the Court, the Court is inclined to accede to the prayer of Mr. Manoj Ambastha that the matter may be listed before the physical Court.

However, to recapitulate the substance of the issue, it would be appropriate to keep in mind that the present writ application has been filed for payment of post retiral dues. In our justice oriented jurisprudence, the constitutional Courts are obliged to promote the constitutional ethos of social justice, which necessarily includes social security measure like post retiral dues.

The pension is not a bounty, but a right accrued to a person, who has rendered his valuable service. The present case is celebrated example of the apathy shown by the Welfare State towards the daily wagers, who have worked for decades. They are unceremoniously told that they have worked as daily wager and as such they have not entitled to post retiral social security benefit. One has to keep in mind that these daily wagers were appointed against the sanctioned post during the period there was ban on regular appointment to cater the day-to-day need of the administration. They have been regularized by using the nomenclature fresh appointment not as a man from open market, but in recognition of their past service as daily wager.

Nomenclature used in the order of appointment is fresh appointment is designed to



defeat the past service and entitlement of pensionary benefits despite the fact that the petitioners were regularized by way of appointment against vacant sanctioned post. Whereas the State has taken the decision to grant pension to the employee of work charge establishment, who have completed 10 years irrespective their services have not been regularized.

The stand is taken in the present case that notwithstanding regularization by way of appointment, past services rendered is of no help for the purpose of qualifying service for pensionary benefits. It is also to be kept in mind that the appointment of the petitioners were made pursuant to a policy decision where cutoff date was fixed that those who were working as daily wager upto 01.08.1985 they have to be regularized. Documents are on record to suggest that steps were taken on behalf of the respondents for years together to identify the person working on daily wages basis on sanctioned vacant post before the cutoff date 01.08.1985 for the purpose of regularization, but in the reality there was pick and chose in the matter of regularization. There is difference between a Government decision and policy decision. Policy decision is for uniform application and does not permit pick and chose or discrimination to similarly circumstanced.

It is seen whether the person similarly circumstanced were appointed/ regularized on the basis of cutoff date prior to the petitioners and they



have been extended the pensionary benefits but without any reasonable classification or justification they have ousted the petitioners, who essentially forms the same homogeneous class of daily wager appointed before 01.08.1985. The effect of the judgment of the Constitution Bench in the case of Direct Recruit Class-II Engineering Officer Association & Ors. Vs. State of Maharashtra & Ors, reported in AIR 1990 SC 1607, particularly, para 44 (B) and the judgment on which the petitioners have relied upon in the present writ application are also indicative of the fact that law in this regard has gone under change. Social security requires different consideration and Welfare State requires liberal approach in construction than identifying the pragmatic approach. The claim of pension rules cannot be better ground by construction. All issues require to be addressed by the parties.

In order to facilitate the parties, the case is adjourned. The Court hope and trust that in the month of October, normalcy may be restored and regular Court hearing matter may resume.

In anticipation of physical Court, put up this case on 12.10.2020.”

12. On 15.10.2020 the case was adjourned for 4th February, 2021 and on 4th February, 2021 Mr. Manoj Kumar Ambastha, learned Standing Counsel No. 26 submitted that his written arguments may be treated as his final argument. In view of



the above, the judgment was reserved. The written submissions of Mr. Manoj Kumar Ambastha, SC 26 is quoted below for ready reference:-

“Written Arguments/submissions by SC-26-Manoj Kumar Ambastha-AOR-652 on behalf of the State Respondents no. 1-7.

Under challenge is Annexure-18/page 90/ order dated 28-8.2018 (hereinafter referred to as the ‘impugned order’) by which claim of the petitioners – to include the period spent as daily wagers be included for the purpose of computation of pension – has been rejected.

The issue is no longer res-integra. The Hon’ble Full Bench in Bhagwan Singh’s case (2014 (4) PLJR 229) after appreciation of relevant materials and the law in this regard, has held that the ‘period of services rendered as a daily wager’ cannot be counted for the purposes of computation of pension under Bihar Pension Rules-1950.

It is submitted that the impugned order suffers from no infirmity, no illegality and no irregularity and thus needs no interference. It is further submitted that Impugned Order is a well considered order and has been passed after taking into consideration the following:-

(1) The Special Scheme of the State Government for appointment of daily wagers. The said scheme/Resolution of the Government is dated 16-3-2006 and is annexed as Annexure-A-Page 24 of



the Counter Affidavit. The said scheme has very clearly laid the specific terms and condition which would be applicable on all. It has also laid down in detail the modalities of its working. It is submitted and that stated that the vires of the said scheme has not been challenged. There are no pleadings challenging the vires of the scheme in the entire petition and thus the said scheme remains operation with full force and with all its terms and condition. Reliance for the said proposition of law is made on Hon'ble Supreme Courts decision in Maheshwar Mandal's case since reported in 2017(2) PLJR SC 327 wherein it has been held there has to be specific pleading if validity or vires is to be challenged.

(2) Rule 59 of the Bihar Pension Rules 1950 and the letter dated 12.08.1969 contained in memo no. 11779 and issued under Rule 59. The brief back ground of the case is that petitioners were working as daily wagers in the PWD/RCD department since 1984 with different dates (details in par 10/pg 11 of the writ petition). On 18th June 1993, the Govt. came out with a Scheme/Annexure 1 (pg31) whereby and whereunder "Adhimanta" was to be given to the daily wagers while appointing them to the sanctioned vacant post. The cut of date was 1.8.1985 i.e. those daily wagers appointed before the said date were to be given the benefit of the said scheme. Though the petitioners were appointed before the said cut off date their effort to take benefit of said scheme/Annexure 1 did not materialize. Later



on the Government on 16-3-2006, came out with a new scheme (referred to as the 2nd scheme for convenience)- Annexure A (pg 24 of the counter affidavit) for appointment of daily wagers on sanctioned vacant post with a cut of date of 11.12.1990. The petitioners were alternately appointed on Group D post vide their appointment letters dated 30-10-2013 (Annexure 11 series in the WP) under the 2nd Scheme dated 16-3-2006/ Annexure A(pg 24 of the CA). Later on after joining (pursuant to their appointment letter – Annexure 11 series) the petitioners protested against clause 2 of their appointment letters (Annexure 11 series) as that stipulated that the service/work done as daily wager prior to their appointment would not be counted for any purpose. On not seeing fruits to the efforts, they approached this Hon'ble Court Ade CWJC No. 14304/2015 (Annexure 15) and this Hon'ble Court vide order dated 2-8-2018 remanded the matter to the Principal Secretary RCD to take appropriate decision. The Principal Secretary RCD vide Annexure-18/ the impugned order dated 28-8-2018 rejected their claim of including the period spent as daily wagers for pension purpose. It is this order dated 28-8-2018/ Annexure-18 is under challenge in this writ application.

APPROBATE AND REPROBATE: The petitioners cannot be allowed to APPROBATE and REPROBATE simultaneously. It is submitted that on perusal of the impugned order dated 28.08.2018/



Annexure 18, it will be seen that the petitioners have been appointed vide Annexure 11 series on vacant sanctioned Group D post, pursuant to the (2nd) Scheme dated 16.03.2006/ Annexure A (Pg 24 of the CA). The (2nd) Scheme clearly stipulated vide clause 5, that the period spent as daily wager will not be treated as a period spent under Government service. This said condition was also incorporated as clause 2 in the appointment letters of the petitioners (Annexure 11 series). It is submitted that these facts are also clearly borne out in the impugned order dated 28.08.2018/ Annexure 18. The petitioners cannot be allowed to challenge clause 5 of the 2nd scheme- Annexure A (pg 24 of the CA)/ clause 2 of their appointment letter (Annexure-11) as their very appointment has been done pursuant to 2nd scheme dated 16.03.2006/ Annexure A (Pg 24 of the CA). The petitioners cannot be allowed to APPROBATE or RE-PROBATE. They cannot be allowed to take benefit of appointment relying under the 2nd scheme dated 16.03.2006/ Annexure A (Pg 24 of the CA) and then be permitted to turn around and seek repudiation of the conditions of the said scheme as being offensive. It is submitted that the Scheme comes as a package. It has to be accepted in totality or not at all. They cannot be allowed to approbate and reprobate. Reliance for the said proposition of law i.e. approbate and reprobate is made on Para 36 of the AIR 2019 SC (Supp) 199- Union of India through Its Secretary, Ministry of Defence DHOPO, New Delhi and Ors



Vs. WG CDR Subrata Das, and Para 10 of AIR 1993 SC 352 RN Gosain Petitioner Vs Yashpal Dhir Respondent.

Rule 59 of the Bihar Pension Rules 1950 and Finance deptt Letter 1024/69/11779 dated 12.08.1969 cannot be read in isolation. It is submitted that Rule 59 of the Bihar Pension Rules 1950 and Finance deptt letter 1024/69/11779 dated 12.08.1969 cannot be read in isolation. It has to be read along with Rule 56, 58, 60 and Rule 61 of the Bihar Pension Rules and the 2nd Scheme- Annexure A (Pg 24 of the CA). On a conjoint reading of Rule 56, 58, 59, 60 and 61 and the above referred letter dated 12.08.1969 it is clear that the benefit of the above rules and the letter will not be available to the petitioners for counting the period spent by thorn as a daily wager as they did not hold any temporary or permanent post in the Government service while working as a daily wager. Further the 2nd Scheme- Annexure A (pg 24 of the CA) under which they have been appointed clearly stipulated that period spent as daily wager would not be counted as a service under Government Service.

Daily wages cannot be equated with Temporary / Permanent employees of the Government or as a work charged establishment employee. The daily wagers cannot be equated with Temporary / Permanent employees of the Government or as a work charged establishment employee. A daily wager is a daily wager. They are not appointees in the strict



sense of appointment. They do not hold any post and thus they not being government servant disables them from the benefit of Rule 59, 60 and 61. In fact the fallacy of the job description of the petitioners are very apparent In Annexure 3 (pg 37 of the writ petition) petitioner No. 1 is described as a 'chowkidar' and in para 10 of the writ petition the petitioner No. 1 is described 'Khalasi'. He can't be both at the same time. In fact the petitioners are themselves not sure as to their job description thus fortifying the contention that they don't hold any post.

Claim of the petitioners of applicability of Annexure 14 (Pg 72 of the writ petition).

Judgment of Hon'ble Supreme Court in Netram Sahu's case. Annexure 14 – Netram Sahu's case does not apply in present case. Netram Sahu's case was with respect to determination of qualified service, i.e. continuous service under the Payment of Gratuity Act 1972. The present case is under Bihar Pension Rules 1950. Definition as given in one act cannot be taken as a definition in an another Act.

Claim of petitioners that 2nd Scheme – Annexure A (Pg. 24 of the CA Scheme of 2006)- does not apply on them but instead Ist Scheme- Annexure 1 (P 31 of the writ scheme of 1993) applies on them.

The above claim of the petitioners is fit to be rejected because they were appointed vide their appointment letter contained in Annexure 11 series which itself was issued on the strength of 2nd Scheme- Annexure



A (Pg 24 of the CA scheme of 2006). Para 5 of the said scheme clearly stated that period spent as daily wager will not be treated as a period spent under Government service.

Claim of petitioners that Annexure 19, Judgment of Hon'ble Supreme Court in Amarkant Rai reported in 2015(2) PLIR SC 437 applies on them.

Annexure 19, Judgment of Hon'ble Supreme Court in Amarkant Rai reported in 2015(2) PUR SC 437 does not apply to the petitioners case as in the said case direction for regularization has been given since he started working on a sanctioned post. In the instant case the petitioner has been working on sanctioned post since 30.10.2013 (Appointment letter Annexure 11 series) and his services are regularized since the said date. Further the petitioners have been appointed pursuant to scheme of 2006- Annexure A (Pg 24 of the CA) and that clearly stipulated that the period spent as daily wager will not be counted for any purpose. The scheme is not under challenge and thus the terms and conditions of the scheme will apply. In Amarkant Rai's case there was no scheme and thus the basic facts are different.

And thus keeping in view the above submission the writ is fit to be dismissed.”

13. Reply argument was submitted on behalf of the petitioners as well. In the written submission of the State emphasis was laid on the resolution of the State Government dated 16.3.2006 to contend that petitioners were told that the scheme does not



recognize past services rendered by the petitioners. It was also submitted that Rule 59 of the Bihar Pension Rules and the notification issued thereunder is not attracted in the case of the petitioners as they were appointed on daily wage basis and in the matter of regular appointment they have been given preferential treatment as they have been appointed before the cut-off dated 1.8.1985. Since the old pension scheme has come to an end and new pension scheme has been introduced, the petitioners were appointed vide Annexure-11 series as fresh appointment, their past service cannot be counted for the purpose of grant of pension. It has been submitted that petitioners cannot approbate and reprobate as they have availed benefit of regular appointment and as such they cannot be allowed to raise the issue of counting of past service once they have accepted fresh appointment vide Annexure-11 series. It has been contended that daily wagers cannot claim parity with temporary and permanent employee as workcharge establishment employee. An attempt was made to distinguish Annexure-14, the judgment of the Apex Court on the ground that petitioners were not working on the vacant sanctioned post, therefore their past services as daily wager cannot be counted as spent under the Government Service. Again distinction has been made by the respondents that in the case of Amarkant Rai, the



issue for regularization has been made because they were working on sanctioned post, whereas the petitioners were working on non-sanctioned post. The submission is contrary to the materials available on the record. From the pleading in the writ petition, counter affidavit and the other documents enclosed and also considering the scheme of regular appointment in terms of Annexure-1 those who were working against sanctioned vacant post were only covered if appointed before cut-off date 1.8.1985 and completed 240 days. The moment the respondents have considered the case of the petitioner under the scheme of Annexure-1, apart from other materials, it is clear that petitioners were working against sanctioned and vacant post prior to 1.8.1985 and they have continuously rendered services, they are entitled to the benefit of past service. For the purpose of qualifying pensionary benefits. The petitioners have also submitted that the respondents took 13 years after the decision of the Secretary, Government of Bihar as contained in Annexure-4 series whereby the Superintending Engineer was directed to give preference to the petitioners for regularization since petitioners have rendered 29-30 years service, they cannot be denied the benefit of past service for the purposes of pensionary benefits. It is to be noted here that in the case of work charge employees if individual has worked 10



years irrespective of the fact that service has been regularized or not, is entitled to pension, whereas the petitioners who have worked on the sanctioned vacant post for three decades, and notwithstanding the fact that their services were regularized, yet they are told that they are not entitled to pensionary benefits. The petitioners have highlighted that they have worked continuously and without any break for three decades, whereas similarly circumstanced others appointed on daily wage basis have been regularized/appointed on regular basis earlier and they have been allowed pension in terms of Rule 59 of the Bihar Pension Rules and thus the respondents have acted in most arbitrary and discriminatory manner in treating similarly circumstanced daily wage employees in the matter of grant of pensionary benefits. Special emphasis was made by the petitioners on the judgment of Netrm Sahu's case, Annexure-14 and also the judgment of the Apex Court in the case of **Amarkant Rai: 2015 (2) PLJR 437 (SC)**.

14. Similar issue as to application of old pension rule in relation to constable appointed pursuant to advertisement No. 2/2004 in different districts on different dates was considered by this Court in CWJC No. 16468 of 2016 (Chandra Kant Kumar & Others Vs. The State of Bihar and others) vide judgment dated 03.04.2017



and relying on the aforesaid judgment this Court has allowed the writ petition of Ram Janam Paswan & Ors. In CWJC No. 8319 of 2020 vide judgment dated 21.01.2021 extending the benefit of old pension scheme on the ground that delay in appointment pursuant to advertisement No. 2 of 2004 in different districts will not cause prejudice to the persons appointed after coming into force the new pension rules as all appointments were made pursuant to advertisement No. 2 of 2004 and as such they forms one homogeneous class and as such the appointees cannot be subjected to two different pension schemes.

15. On consideration of the rival contentions of the parties, the Court finds that (a) the petitioners were appointed against sanctioned vacant post before the cut-off date 1.8.1985, (b) the petitioners have continuously worked without any break for nearly three decades, (c) despite policy decision as contained in Annexure-1 and repeated instructions issued by the Engineer-in-Chief, the respondents have adopted pick and choose and regularized the services of similarly circumstanced others who were appointed on daily wage basis along with the petitioners before the cut-off date 1.8.1985, (d) the petitioners' assertion that they have been appointed on sanctioned vacant post before cut-off date is supported by various annexures issued by the respondents



which admits the fact that the petitioners were appointed on sanctioned vacant post as daily wage employees, (e) the judgment of Netram Sahu's case is attracted in the present case as in the matter of counting past services for the purpose of pensionary benefits is applicable to the petitioners for two-fold reasons; (i) the petitioners have rendered their services continuously for three decades and (ii) similarly circumstanced others have been regularized/appointed on regular post earlier and they have been granted the benefit of pension, (f) since the petitioners were appointed on sanctioned post and they have continuously worked, they are entitled to the regularization in terms of the judgment of the Apex Court in the case Amarkant Rai and (g) the averments of the respondents that petitioners have not been appointed against sanctioned vacant post runs contrary to the records.

16. The principle of approbate and reprobate is not attracted in the present case in view of the fact that the claim of the petitioner was based on policy decision dated 18.6.1993, Annexure-1 and after two decades the respondents have given fresh appointment to the petitioners. As the appointment was made in recognition of the past services rendered by the petitioners, the respondents were required to count the past services once they have regularized the



services of the petitioner by using the expression 'regular appointment'.

17. The nomenclature is not decisive and substance is decisive and in view of the fact that the petitioners and other similarly circumstanced were appointed well before cut off date 1.8.1985. The daily wagers appointed before 1.8.1985 forms one homogeneous class and there cannot be two differential treatment in the matter of grant of pension to those regularized/appointed on regular post earlier than these petitioners taking advantage of their own wrong as the petitioners cannot be told that their right stands defeated because 'I failed to perform my duty and took decision for their regular appointment within time.' Reference in this connection may be made to the judgment of Justice Chagla, C.J. in the case of **All India Groundnut Syndicate Ltd. Vs. Commissioner of Income Tax, Bombay City: AIR 1954 Bom. 232** in which it has been held as follows:-

“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under Sub-section (2) of [Section 24](#). In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person--we take it that the



Income-tax Department is included in that definition--can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default."

18. In the light of the judgment of the Constitution Bench, the respondents are not justified in taking different stand with regard to the petitioners for the purpose of grant of pensionary benefits.

19. In view of the facts and circumstances mentioned above, the Court is constrained to allow the writ petition in the light of the judgment of the Apex Court in the case Netram Sahu and Amarkant Rai(Supra) and also noting the fact that the petitioners form same homogeneous class as other persons who were appointed on daily wages before 1.8.1985 and have been granted benefit of pension, petitioners are also entitled to similar treatment. Accordingly, the past service rendered by the petitioners shall be counted for the purpose of qualified pensionary service i.e. only to the extent of 10 years and rest services shall not be counted for quantification of pensionary benefits. Since the petitioners' past service has been recognized by the respondents and only as a recognition of past service, they have been appointed on regular post, they are entitled to pensionary benefits notwithstanding coming into force new pension scheme as taking advantage of



their own wrong in causing delay in regular appointment of the petitioners by the respondents, the petitioners cannot be denied the benefit of pension saying that the new pension scheme has been introduced.

20. In the result, the writ petition is allowed to the extent indicated above. There shall be no order as to cost.

(Anil Kumar Upadhyay, J)

spandey/-

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