

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.644 of 2023

-
1. Dr. Shiv Deo Singh Son of Late Chulhai Singh, Resident of Mohalla- Birla Colony, Near Durga Mandir, P.S. Phulwarisharif, District- Patna. Posted as Professor and Dean Management, Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna.
 2. Dr. Chandra Singh Son of Late Dhum Singh Resident of Flat No- 405, Jawahar Apartment, New Patliputra Colony, P.S.- Patliputra, District- Patna. Posted as Professor, Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
4. The Additional Secretary, Department of Education, Government of Bihar, Patna.
5. The Director, Higher Education, Department of Education, Government of Bihar, Patna.
6. The Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna represented through its Director, 1-Jawaharlal Nehru Marg, Patna- 800001
7. The Director, Lalit Narayan Mishra Institute of Economic Development and Social Change, 1-Jawaharlal Nehru Marg, Patna-800001.
8. The Managing Committee, Lalit Narayan Mishra Institute of Economic Development and Social Change, 1-Jawaharlal Nehru Marg, Patna-800001.
9. The Chairman, Lalit Narayan Mishra Institute of Economic Development and Social Change, 1-Jawaharlal Nehru Marg, Patna-800001.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 10463 of 2018

1. Md. Habib, S/o Md. Hafiz, resident of Choudhary Hotel Gali, Samanpura, Raja Bazar, Post- B.V. College, Patna- 14.
2. Ram Badan Rai, Son of Late Dina Nath Rai, resident of Adarsh colony, New Brahmpur, Road No. 03, Patna- 27, District- Patna- 27.
3. Ragini Dubey, D/o Late Ranvijay Kumar Mishra, Resident of H.R..D. Public School, Shivpuri Road NO. 1, Boring Road, Patna- 23.
4. Md. Naimuddin Siddique, S/o Late Md. Quasim, resident of Staff Quarter,



L.N. Mishra Institute Campus 1, Bailey Road, Patna- 1.

5. Bijendra Kumar, S/o Late Lakhan Singh, Resident of Rajeev Nagar, Road No. 18 West Vir Kunwar Singh Chowk, Mandir Nalapar, Patna- 24.
6. Krishna Paswan, S/o Late Ramdas Paswan, Resident of Ranipur Phulwarisharif, Patna.
7. Nityanand Mishra, S/o Late Biranchi Mishra, resident of Balua Bazar, Supaul.
8. Anil Kumar Jha, S/o Sri Kant Jha, Resident of Baghant, Manigachi, Darbhanga- 847422.
9. Shailendra Mohan, S/o Late Shambhu Singh, resident of H. No. 103 A, C.D.A. Colony, Shashtrinagar, Patna- 800023.
10. Bishnu Bahadur, S/o Sukaldev Bahadur, resident of Chibbo Basati, Kalimbag, Darjling, West Bengal.
11. Bharat Lal Kamat, S/o Late Mangni, resident of Gaur Andhara, Jhanjharpur, Madhubani.
12. Baidnath Jha, S/o Late Jai Kant Jha, Resident of H.No. 114, Indira Nagar, Rajapur Pul, Patna- 800001.
13. Mithlesh Ram, S/o Late Balister Ram, Resident of Jhopri Mohalla, Amar Nath Road, Adalat Ganj, Kotwali- Patna- 800001.
14. Ram Janam Paswan, S/o Late Ghopari Paswan, resident of Mangli Chak, Parsa Bazar, Patna.
15. Sudama Ram, S/o Late Pyare Ram, resident of Shivpuri Sashttrinagar, Patna.
16. Md. Asif, S/o Late Md. Ibrahim, resident of F.C.I. Road, R.K Nagar colony, Near Masjid, Phulwarisharif, Patna.
17. Smt. Anita Jha, D/o late Dharanath Jha, resident of C/o B.N Mishra, Jyotipuram, Maurya Path, Khajpura, Patna.
18. Binod Kumar @ Binod Kumar Jha, S/o Late Harishchandra Kumar, Resident of H/o Late Sharma Nand Singh, Shiv Homeo Rajapul, Patna.
19. Raj Nandan Singh Yadav, S/o Late Shiv Nandan Singh Yadav, Resident of Makhdumpur, Beur, Anisabad Patna- 800002.
20. Prabhas Narain Jha, S/o Late Mahendra Narayan Jha, resident of Saketpuri, Machhaligali, Rajabazar, Patna- 14.
21. Smt. Kamla Devi, D/o Dukhan Lal, Resident of H.No.- 100, Jitu Shah Lane, G. P.O., Patna.
22. Md. Parwej Ali, S/o Late Ali Akhtar, resident of New Millat Colony, Sector III, Phulwarisharif, Patna.
23. Raj Kumar Yadav, S/o Late Surya Narain Yadav, Resident of Lohapiper, Panchrukhi, Babubarhi, Madhubani- 847224.
24. Surya Narayan Kumar, S/o Late Chetharu Ray, Resident of Thadhi, Andhara Thadhi, Jhanjharpur, Madhubani- 847401.
25. Shayamanand Jha, S/o Late Shivalak Jha, resident of Jagat Vaishnavi Apartment flat No. C/43, Ashiananagar, Patna- 800025.



... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
4. The Director, Higher Education Department, Government of Bihar.
5. L.N. Mishra Institute of Economic Development and Social Change through its Director- 1, Bailey Road, Patna.
6. The Director, L.N. Mishra Institute of Economic Development and Social Change, 1 Bailey Road, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 17263 of 2018

Ashutosh Kumar Thakur Son of Late Rabindra Nath Thakur, resident of Village and P.O.- Kadrachak, P.S.- Shambhuganj, District- Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
4. The Director, Higher Education Department Government of Bihar.
5. L.N. Mishra Institute of Economic Development and Social Change, through its Director, 1- Bailey Road, Patna.
6. The Director, L.N. Mishra of Economic Development and Social Change, 1- Bailey Road, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 20846 of 2018

Mahashottam Jha S/o Late Laxmi Kant Jha, Resident of Road No.-18, Rajeev Nagar, Patna- 800024, P.S.- Rajeev Nagar, P.O.- Keshari Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar,



Patna.

- 3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
- 4. The Director, Higher Education Department, Government of Bihar.
- 5. L.N. Mishra Institute of Economic Development and Social Change, through its Director, 1-Bailey Road, Patna.
- 6. The Director, L.N. Mishra Institute of Economic Development and Social Change, 1-Bailey Road, Patna

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 22613 of 2018

- 1. Braj Nath Thakur, Son of Late Ram Chandra Thakur Resident of Village P.O.-Durgapatti Vaya Sahar,P.S. Madhawapur,Distt.-Madhubani, presently residing at D-1, Officers Flat, Opposite- SBI, Rajbansi Nagar Branch, New Punaichak, Phulwari, LBS Nagar, Patna.
- 2. Hriday Narayan Jha Son of Late Sushil Jha Village-Bhabham,P.O.-Harari Vaya Jhanjharpur,P.S. Rudrapur,Distt.-Madhubani

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
- 2. The Principal Secretary,Education Department, Govt. of Bihar,Patna
- 3. The Principal Secretary,Fiance Department Govt. of Bihar,Patna
- 4. The Accountant General Bihar,Beer Chand Patel Path Patna
- 5. The Director,Higher Education Department,Govt. of Bihar,Patna
- 6. L.N.Mishra Institute of Economic Development and Social Change,through its Director,Baily Road,Patna
- 7. The Director,L.N. Mishra Institute,Baily Road,Patna
- 8. The Secretary Law Department Govt. of Bihar,Patna

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 644 of 2023)

For the Petitioner/s : Mr. Mrigank Mauli, Sr. Advocate
Mr. Krishna Chandra, Advocate
For the State : Mr. Pawan Kumar, A.C. to AG
For the LNMI : Mr. Ravindra Kumar Shukla, Advocate
Mr. Ritu Raj Shukla, Advocate
Mr. Pratyush Pratap Singh, Advocate

(In Civil Writ Jurisdiction Case No. 10463 of 2018)

For the Petitioner/s : Mr. Nikhil Kumar Agrawal, Advocate
Mr.Aditi Hansaria, Advocate



For the State : Mr.P.K. Shahi, AG
Mr. Vikas Kumar, Advocate
Mr. Mrigendra Kumar, AC to GP 20
For the LNMI : Mr. Ravindra Kumar Shukla, Advocate
Mr. Ritu Raj Shukla, Advocate
Mr. Pratyush Pratap Singh, Advocate

(In Civil Writ Jurisdiction Case No. 17263 of 2018)

For the Petitioner/s : Mr. Abhinav Shrivastava, Advocate
Mr. Roshan Kumar Mishra, Advocate
For the State : Mr. Subhash Chandra Mishra, SC16
For the LNMI : Mr. Ravindra Kumar Shukla, Advocate
Mr. Ritu Raj Shukla, Advocate
Mr. Pratyush Pratap Singh, Advocate

(In Civil Writ Jurisdiction Case No. 20846 of 2018)

For the Petitioner/s : Mr. Nikhil Kumar Agrawal, Advocate
Mr. Aditi Hansaria, Advocate
For the State : Mr. P.K.Shahi, AG
Mr. Vikas Kumar, Advocate
For the LNMI : Mr. Ravindra Kumar Shukla, Advocate
Mr. Ritu Raj Shukla, Advocate
Mr. Pratyush Pratap Singh, Advocate

(In Civil Writ Jurisdiction Case No. 22613 of 2018)

For the Petitioner/s : Mr.Kumar Kaushik, Advocate
For the State : Mr. Raghwanand, GA-11
Mr. Pratik Kumar, AC to GA-11
For the LNMI : Mr. R.K.Shukla, Advocate
For Resp. Nos. 6 & 7 : Mr. R.K.Shukla, Advocate
Mr. Manish, Advocate
For the Acctt. Gen. : Mr. Chaitnya Swaroop, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-08-2024

The challenge raised in the batch of writ petitions; by the teaching and non-teaching staff of the Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna ('L.N Mishra Institute' for short), is to the sustainability of the amendment to the rules regulating service conditions brought out by notification dated 19.12.2017, produced as Annexure-6 in



CWJC No. 644 of 2023. By the said notification the benefit of pension as per the Old Pension Scheme, as applicable to the Government employees, which was made applicable to the teaching and non-teaching staff of the L.N Mishra Institute by the Lalit Narayan Mishra Institute of Economic Development and Social Change Institute Service Condition Rules, 2017 (Rules of 2017, for short) was amended and modified to one under the Provident Fund Scheme. The petitioners, all of whom are/were the employees of the L.N Mishra Institute prior to 01.09.2005, claim that the notification at Annexure-6 cannot take away their vested rights to pension on superannuation, brought in by the Rules of 2017.

2. Mr. Mrigank Mauli, learned Senior Counsel appeared for the petitioners in CWJC No. 644 of 2023, the first of whom has already retired in March-2024 and the second petitioner is still in service. It is pointed out that the Institute was taken over by the State under the Bihar Private Educational Institutions (Taking Over) Act, 1987 ('Act of 1987' for short) produced as Annexure-1 in CWJC No. 644 of 2023. Even before the said enactment, there was an Ordinance by which the take-over was effected which culminated in the Act of 1987. As per Section 3, the L.N Mishra Institute, which alone was scheduled in the Act,



stood vested absolutely in the State Government. Section 6 provided for the manner of determination of the terms of service of the teaching and other employees of the L.N Mishra Institute. The statutory requirement was the appointment of a Committee of Experts to examine the credentials of each member of the teaching and non-teaching staff and based on the Committee's recommendation, to decide as to whether the individuals should be absorbed into the service of the L.N Mishra Institute or not. As per the statutory mandate, Committees were formed and the writ petitioners were regularized and absorbed into the service of the Government as per Annexure-12 produced in the supplementary affidavit filed. The petitioners herein are at Serial No. 3 and 5 having been regularized respectively from their date of appointment i.e.18.04.1986 and 17.08.1987. The recommendation which led to their regularization is produced at Annexure-3 to the writ petition which is a report of 15.10.2007.

3. While the petitioners were continuing so, the Executive Government made the Rules of 2017 as empowered under Section-11(1) of the Act of 1987. The translation of Annexure-4 i.e. the Rules of 2017 is produced along with the supplementary affidavit. Rule-9 provided for regular employees appointed and working prior to 01.09.2005 to be governed by



the Old Pension Scheme and by the Bihar General Provident Fund Scheme while those appointed after 01.09.2005 would be governed by the New Pension Rules determined by the State Government. A few days later, by Annexure-5, Rule 9 was kept in abeyance and subsequently by Annexure-6 in the year 2017 itself, it was amended taking away the benefit of pension conferred on the employees of the L.N. Mishra Institute, as was available to the Government employees.

4. It is argued that Annexure-5 was a letter issued by the Secretary and not one emanating from the Government or issued under the authority of the Governor. ***Employee's State Insurance Corporation Vs. Union of India and Others*** reported in ***(2022) 11 SCC 392*** was relied on to argue that when there is a conflict between the executive instruction or an office memorandum and statutory regulations, the latter would prevail. Annexure-6 is also asserted to be not notified in the Gazette which makes the amendment to the notified Rules unworkable. Reliance is placed on ***Union of India v. G.S. Chatha Rice Mills and Another*** reported in ***(2021) 2 SCC 209*** to contend that the subordinate legislation has to be made in accordance with the procedure prescribed under the statute or not at all. Section 11 of the Act of 1987 was specifically pointed out to indicate that the



Rules have to be made by notification in the Official Gazette and every Rule made has to be laid for not less than 15 days before each house of the State Legislature. The laying of the Rules before the State Legislature, the learned Senior Counsel concedes, has been held by the Hon'ble Supreme Court to be merely directory; but the publication in the Official Gazette is definitely mandatory.

5. Mr. Nikhil Kumar Agrawal, learned Counsel who is appearing in CWJC No. 10463 of 2018 and CWJC No. 20846 of 2018 pointed out that all the petitioners in the two writ petitions are non-teaching staff. He adopted the arguments of the learned Senior Counsel but pointed out that even the Rules of 1988 brought out under the Act of 1987, by Rule-11 prescribed that the officers and employees of the L.N Mishra Institute will be officers and employees of the State Government, subject to the condition prescribed in Section-6 of the Act of 1987. It is his argument that even at that time when the first Rules were promulgated, the Government had contemplated the status of the employees of the L.N Mishra Institute as Government employees. Further, it is pointed out from the counter affidavit of the State that there is no explanation offered for treating the L.N Mishra Institute differently when many of the other



institutions being Colleges, Boards and Corporations taken over under various enactments were given the benefit and the employees therein conferred with the status of Government employees who were also enabled pension.

6. Mr. Abhinav Srivastava, learned Counsel appearing for the petitioner in CWJC No. 17263 of 2018; who was a non-teaching staff, refers to Annexure-5 judgment based on which Annexure-6 was issued regularizing certain employees, in which list the writ petitioner was at Serial No. 5. It is asserted that the petitioners are not claiming parity with government employees and it is their contention that they are government employees having been conferred with the status, after verification of their credentials by a Committee; which is the procedure laid down under the Act of 1987, for such absorption. It is pointed out from Rule-9 that the date prescribed as 01.09.2005 has a special significance. The Central Government had brought out the Contributory Pension Scheme, which is termed as the New Pension Scheme in 2004 and it was on 31.08.2005 that the Government of Bihar resolved to bring in the New Pension Scheme as applicable to the employees appointed after 01.09.2005. Hence, the Old Pension Scheme was applicable to all the Government employees appointed prior to 01.09.2005;



which status has been conferred on the petitioners herein. It is also pointed out that Rule-9 speaks of 'employees' and there can be no distinction made of teaching and non-teaching staff. It is argued that the accrued rights of the petitioners cannot be taken away by an amendment which is also not notified and brought out in accordance with the statute.

7. The learned Advocate General at the outset conceded that there was no publication in the Gazette regarding the modification of Rule 9, despite the Government having sent the same for publication. As of now, i.e., on 23.07.2024, a Gazette notification has been issued, which was also produced across the Bar. The learned Advocate General took us to the judgment produced along with the counter affidavit of respondent nos. 2 to 5, in which some of the petitioners herein also were parties. Therein, the reliefs claimed were of (i) retirement age of 65; at par with the teachers regulated by the norms of the AICTE and the UGC, (ii) grant of pension and gratuity of Rs. 10 Lakhs; akin to that enabled to government employees and (iii) service conditions at par with those regulated by the norms of the UGC. The learned Single Judge found that, as per the Rules then existing, notified on 08.01.2005, there is reservation in accepting a broad



interpretation as to all the service conditions applicable to the government employees being applicable to the employees of the L.N Mishra Institute. It was specifically found that the entitlement with regard to age of retirement, contributory provident fund, gratuity and leave encashment are dealt with in Rule 8 and 9 of the said Rules. The said judgment has become final inter-parties and an appeal filed was rejected peremptorily since the defect(s) raised were not cured; as is evident from Annexure-D. It is urged that Rule 9 was never implemented and there could not have been any claim for pension raised even in accordance with the Rules of 2017. Immediately after the Rules were brought into force, the same was kept in abeyance, and then it was modified. As of now, there is a Gazette notification published. In which circumstance, as per the various decisions of the Hon'ble Supreme Court, there can be no right accrued for pension prior to retirement, and the benefit of pension would depend on the rule applicable at the time of retirement.

8. The petitioners additionally relied on the following decisions to buttress their contentions:

- 1. *I.T.C. Bhadrachalam Paperboards v. Mandal Revenue Officer*, (1996) 6 SCC 634**
- 2. *State of H.P. v. Rajesh Chander Sood*, (2016) 10 SCC 77**
- 3. *Punjab State Coop. Agricultural Development Bank Ltd. v. Coop. Societies*, (2022) 4 SCC 363**



4. *G. Sadasivan Nair v. Cochin University of Science & Technology*, (2022) 4 SCC 404

5. *Dr. Punam Singh v. The State of Bihar & Ors. in C.W.J.C. No. 3697 of 2020 dated 19.01.2024*

9. The first petitioner in C.W.J.C. No. 644 of 2023 is retired and the second petitioner is still employed in the L.N Mishra Institute. We would first refer to the facts in the said writ petition, since, it projects the prayer of a retired person and a serving employee; which has to be dealt with separately insofar as the Government having come out with a Gazette notification as on 24.07.2024, which is the amendment to the Rules, published in the Gazette notification.

10. Both the appellants were working in the L.N Mishra Institute when, by an Ordinance it was taken over and later the Act of 1987 was promulgated produced as Annexure-1 in the writ petition. The Schedule of the Act only included the L.N Mishra Institute; which, by the statutory imprimatur was transferred and vested absolutely in the State Government free from all encumbrances as per Section 3(1). Section 6 is relevant and extracted hereunder: -

6. Determination of terms of services of the teaching staff and other employees of the Institution.

(1). As from the date of the notified order, all the staff employed in the Institution shall cease to be the



employee of the institution: Provided that they shall continue to serve the institution on an ad hoc basis till a decision under sub-sections (3) and (4) is taken by the State Government.

(2). The State Government will set up one or more Committees of experts and knowledgeable persons which will examine the bio-data of each member of the teaching staff and ascertain whether appointment, promotion or confirmation was made in accordance with the University Regulation or Government direction/circular and take into consideration all other relevant materials, such as qualification, experience, research degree, etc., and submit its report to the State Government.

(3). The State Government on receipt of the report of the Committee or Committees, as the case may be, will decide in respect of each member of teaching staff on the merits of each case, whether to absorb him in Government service or whether to terminate his service or to allow him to continue on an ad hoc basis for a fixed term or on contract and shall, where necessary, redetermine the rank, pay, allowance and other conditions of service.

(4). The State Government shall similarly determine the term of appointment and other conditions of service of other categories of staff of the Institution on the basis of facts to be ascertained either by a Committee or by



an officer entrusted with the task and the provisions of sub-sections (2) and (3) shall apply mutatis mutandis to such case.

11. As per the above extracted provision, all the employees, teaching and non-teaching staff, would cease to be employees of the Institute but will be continued on *ad hoc* basis till a decision is taken under sub-sections (3) and (4). Sub-sections (2) and (3) are with respect to teaching staff under which a Committee/Committees of experts and knowledgeable persons are to be appointed to ascertain the manner in which the appointments, promotions or confirmations were made and to look at whether it is in compliance with the University regulations and Government directions. The Committee was also to take into account other relevant materials like qualification, experience, research, degree etc and submit its report to the State Government as per sub-section (3). The State Government would take a decision on the individual teaching staff, considering their individual merit and decide as to whether, one should be terminated, allowed to continue on an *ad hoc* basis or on contract and whether the rank, pay and allowances and other conditions of services should be redetermined. Sub-section (4) provided that in a similar fashion, the non-teaching staff also shall be considered for continuation



or termination.

12. Admittedly, earlier also there were Rules framed for regulating the terms and conditions and service of the employees. One of such Rules had led to C.W.J.C. No. 3473 of 2015 produced as Annexure-1 in the counter affidavit and specifically stressed upon by the learned Advocate General. The five petitioners therein, were working in various capacities in the Institute and the reliefs sought; after the takeover by the State Government, was for fixing their age of retirement at 65 years at par with the norms of AICTE and UGC, grant of pension at par with Government servants, gratuity at the rate of Rs.10 lakhs and service conditions at par with the teachers of the other Universities in the State of Bihar; extending the same benefits as brought out by the UGC, made applicable to such other Universities. The learned Single Judge expressed reservation in accepting such a broad interpretation with regard to all service conditions applicable to the Government or University employees. The Service Rules notified on 08.01.2005, and Rules 8 and 9 therein were specifically reckoned. The age of retirement, contributory provident fund, gratuity and leave encashment were specifically dealt with under the aforementioned Rules. Noticing a Gazette notification



of 13.11.1990 and many of the issues having not been addressed by the Rules of 2005, there was found a legal obligation on the State Government to consider very many aspects regarding service conditions, especially since Annexure-3 notification had not been rescinded or amended. The writ petition hence was disposed of with a direction to the Principal Secretary, Department of Education, Government of Bihar, Patna, to consider the rights and claims of the petitioners in terms of Annexure-3 notification.

13. We do not think that the judgment in any way impedes the present claim of the petitioners, even if some of the petitioners in the cited decision are petitioners before us. The new Rules have come into force clearly applicable to the subject Institute and in compliance of the directions issued by this Court, to address issues hitherto not addressed. The Rules of 2017 were thus validly brought out; under which the petitioners now raise their claim.

14. The Rules of 2017 brought out under the Act of 1987 and its subsequent amendment has given rise to these batch of writ petitions. Rule 9 of the Rules of 2017 is extracted hereunder from Annexure-13 produced along with the supplementary affidavit of the petitioner: -



9. Benefits payable to the employees of the Institute.

(1) The regular employees appointed and working prior to 01-09-2005 will be governed by the old pension scheme and by the Bihar General Provident Fund scheme. After 01.09.2005, legally appointed Teaching and Non-teaching employees will be governed by the new pension rule determined by the state government.

(2) Benefit equal to gratuity limit declared by the government of Bihar, time to time, will be applicable to the employees covered by old pension scheme.

(3) Leave encashment. - Facility of leave encashment will be given to employees after retirement from service from the Institute. This facility will be payable in conformity with the employees of the University, according to the Rules declared by the government of Bihar in this regard.

(4) Medical Facilities. - All facilities relating to medical, payable to the employees of the state government will be payable to the employees of the Institute.

(5) Other Facilities. - Apart from the above mentioned facilities, facilities declared by the state government for its employees from time to time, will be payable to the employees of the institute.

15. The above rule entitle persons who were appointed prior to 01.09.2005 to the Old Pension Scheme and



those appointed after 01.09.2005, to the New Pension Scheme. The relevance of the cut-off date is insofar as the Government of Bihar having accepted the New Pension Scheme from 01.09.2005 retaining the Old Pension Scheme only for persons who were appointed till 31.08.2005.

16. The controversy arose, since immediately after the Rules were brought in by Annexure-5, Rule 9 was kept in abeyance. Annexure-5 is dated 07.09.2017, but is issued by the Additional Secretary, Government of Bihar. The Rule also stood amended by 19.12.2017 as per Annexure-6, wherein Rule 9 was substituted in the following manner: -

“9. Benefits payable to the employees of the Institute.- Employees legally appointed and working in the institute are covered by employees provident Fund Scheme. Benefits of employees provident fund Scheme will be available to them.”

This would indicate, according to the Advocate General, that the Government decided to take away the benefits of pension, both under the Old and New Scheme, and confine the retirement benefits of all the employees of L.N Mishra Institute to that available under the Provident Fund Scheme.

17. We would first consider whether Annexure-5 and Annexure-6 can be sustained for which we have to revert back



to the Act of 1987 and refer to Section 11 of the said Act which is extracted hereunder: -

11. (1) The State Government may by notification in the Official Gazette make Rules for carrying out the purposes of this Act.

(2). All Rules made under this section shall be laid for not less than 15 days before each House of the State Legislature as soon as may be after they are made and shall be subject, to such modification as the two Houses of the State Legislature may make during the session in which they are so laid or the session immediately following. Any such modification shall be without prejudice to the validity to anything previously done thereunder.

The above provision would clearly indicate that the Rules have to be made by a notification in the Official Gazette and all Rules made shall be laid before the Legislature for not less than 15 days.

18. The learned Senior Counsel appearing for the petitioners did not urge an infirmity on the ground of non-compliance of sub-section (2) but insisted that sub-section (1) has not been complied with. The fact that no amendment to the Rule was notified in the Official Gazette is crystal clear by the fact that the notification produced before us, across the bar, is dated 23.07.2024 i.e. on the last day of hearing of these writ



petitions.

19. *I.T.C. Bhadrachalam Paperboards* (supra) looked at the statutory requirement of publication of a Rule or Order in the Official Gazette; which was held to be mandatory. It was held that the object of publication in the Official Gazette is not merely to give information to the public, but to give final Official confirmation to the Rule/Order. This is the only Official version of the Rule or Order which could be relied upon by Courts under Section 8 of the Indian Evidence Act, 1872. We have to find, on the authoritative pronouncement of the Hon'ble Supreme Court, that the amendment to Rule 9 of the Rules of 2017 came into effect only on 23.07.2024, when it was published in the Official Gazette.

20. The next question vigorously urged by the learned Advocate General, is the efficacy of Annexure-5 which had kept the Rule of 2017 in abeyance. Even if the Gazette notification was delayed, the rule still was kept in abeyance and there could be no reliance on the same, is the contention. If Annexure-6 can be acted upon only as on 23.07.2024, Annexure-5 would make it clear that the Rules of 2017 was never implemented is the compelling argument. We are unable to agree, since the Rules brought out by publication in the Official Gazette cannot be kept



in abeyance by the Joint Secretary to the Government.

21. The Rules have been brought out, as statutory rules under the Act of 1987, by the Government, which has its application from the date on which it was brought out. There is no question of an Official of the Government keeping the same in abeyance. The authoritative pronouncement in ***I.T.C. Bhadrachalam Paperboards*** (supra) applies equally in the case of keeping in abeyance of a rule properly notified. When the rule is brought out by a notification in the Official Gazette; if it is to be kept in abeyance, then there should be a decision taken by the Government and it has to be by a notification, published in the Official Gazette. The Official version of the Rules brought out by the State, exercising statutory power conferred under the Act of 1987, cannot be placed in the back-burner by the officers of the Government. We find absolutely no reason to sustain either Annexure-5 or Annexure-6. Insofar as the efficacy and applicability of the amended Rules from 23.07.2024, on the date on which it was published; we are not called upon to decide the same since there is no challenge to it as of now. We would leave that question open and would only consider the applicability of the Rules of 2017 as originally framed, till it was amended on 23.07.2024.



22. There is no dispute that the petitioners in C.W.J.C. Nos. 644 of 2023, 10463 of 2018, 17263 of 2018 and 20846 of 2018 were regularly absorbed in the service of the Institute before take over by the State Government. The question is as to whether they would have the eligibility to pension as is available to the Government employees. The parity of claim need not be considered, since as per the Rules of 2017, all the petitioners who were appointed prior to 01.09.2005 has been enabled pension under the Old Scheme and those appointed after the said date, under the New Scheme; as long as those appointed prior to 01.09.2005 are regularised.

23. We do not think that the claim made by the petitioners that other educational institutions and several Corporations and Boards have given the benefit of pension to their employees, with the approval of the State Government, would by itself enable such consideration of the employees of the L.N Mishra Institute.

24. In this context, we also have to refer to the decisions placed before us on the eligibility to pension at the time of severance, on superannuation. ***Rajesh Chander Sood*** (supra) was a case in which a pension scheme was introduced by the Government, not in the capacity of an employer but as a



welfare measure, for the respondent-employees of Government controlled independent corporate bodies, which was to be operated on a self-sustaining basis. The Government on subsequent administrative review found the scheme to be non-viable, financially and revoked the same retrospectively by fixing a cut-off date. The State Government appointed a High-Level Committee and based on its recommendations, took a decision on 29.11.2004 to repeal the 1999 Scheme. It was also decided that regular employees who had retired from corporate bodies, during the period of the subsistence of the 1999 Scheme from 1999 to 2004, would not be affected.

25. A challenge was raised by a number of employees, who had been deprived of the benefit of the 1999 Scheme, by the notification of 2004. The Hon'ble Supreme Court considered the question as to whether a vested right was created on the employees of the corporate bodies, when they came to be governed by the 1999 Scheme. The provisions of the Scheme were examined to find that, earlier the employees were entitled to pension under the Employees Provident Fund Scheme, 1995. When the 1999 Scheme came into operation, the employees were given an option to be governed by the 1999 Scheme, subject to their fulfilling the prescribed qualifying service, on



the exercise of which option, the employee's contribution to the provident fund account would stand transferred to the corpus created under the 1999 Scheme. While refusing to accept the submission of the State that no right accrued to the employees, it was held that as soon as the employees concerned came to be governed by the 1999 Scheme; a contingent right came to be vested in them which created a right to claim pension at the time of their retirement. It was also categorically held that the right would crystalize only upon the fulfillment of the condition of having rendered the qualifying service without any blemish. It was declared that the claim for pension would crystalize only when the employee acquires the minimum prescribed period of service and also do not suffer a disqualification, dis-entitling him to a claim for pension (paragraph no. 71).

26. The Hon'ble Supreme Court though refused to accept that the right under the 1999 Scheme would only vest on attaining the age of superannuation, it was held that the cause of action to raise a claim would arise only on the date on which the employee retires from service. The Hon'ble Supreme Court also considered, as to whether the contingent right, vested in an employee under the 1999 Scheme was binding and irrevocable for all times. The learned Judges were of the considered view;



going by the earlier pronouncements of the Hon'ble Supreme Court, that a cut-off date prescribed for extending better and higher pensionary benefits, based on the financial health of the employer was perfectly in order; it would also be equally permissible to provide legitimately, that the pensionary benefits would be extended only up to a cut-off date; on consideration of the financial condition being not feasible for extension of such benefits.

27. Specific reference was made to ***Railway Board v. C.R. Rangadhamaiah*** (1997) 6 SCC 623 wherein it was held that vested rights under the Rules could not be taken away. The said decision was distinguished on the premise that therein, the employees who were retired from service had been deprived of their pension, as per the amended rule; made retrospective, depriving such pensionary benefits even to those who had retired. In ***Rajesh Chander Sood*** (supra) it was held that the repeal of the 1999 Scheme did not adversely affect those employees who had retired prior to 2004; when the Scheme was repealed. In ***Rajesh Chander Sood*** (supra) also found that those who retired prior to 02.12.2004, on which date the 1999 Scheme was revoked, were entitled to pension but those who continued in service as on 02.12.2004, were only entitled to the Provident



Fund Scheme.

28. ***Punjab State Coop. Agricultural Development Bank Ltd.*** (supra) again was a case in which an amendment was brought in, with retrospective operation, divesting employees of the benefit already granted to them under the earlier Rules. The non-availability of financial resources was held to be not a ground to take away vested rights accrued to employees; that too with respect to a welfare measure bringing in socio-economic security. The employer along with the serving employees were pitted against the retired employees who claimed pension; which was available to them as on the date of retirement. Both the employer and the serving employees raised contentions about the dire financial situation of the cooperative society. While rejecting the appeals, the Hon'ble Supreme Court also held that the serving employees have no locus to question the eligibility to pension of the retired employees. Their apprehension as to their own retirement dues being put in jeopardy was not realistic, since the serving employees were protected under the Employee's Pension Scheme under the Employees Provident Fund Act. The appeal of the employer was also dismissed finding the employees who retired; while the eligibility for pension was existing, would be continued to be



entitled to pension.

29. **G. Sadasivan Nair** (supra) was a case in which the Rules were amended providing for including time spent in practice as a legal practitioner, to the pensionable service; applicable only to the posts in which practice was a condition of eligibility. The appellant after having spent some years in legal practice was appointed as a faculty member in the University. Experience as a legal practitioner was not a requirement for the faculty position, but the rules available at the time of appointment enabled such experience to be counted for pensionable service; without any further condition. The condition that experience or period spent as a legal practitioner would be counted as pensionable service; only in posts which had such an eligibility condition, was brought in later, by an amendment, when the appellant was continuing in service. The Hon'ble Supreme Court accepted the appellant's contention, only on the ground that another person was granted the benefit of the period spent as an Advocate, to compute the total qualifying service eligible for pension. The learned Judges specifically held so in paragraph no. 32 which is extracted: -

32. While we accept the settled position of law that the rule applicable in matters of determination of pension is that which exists at the time of



retirement, we are unable to find any legal basis in the action of the respondent University of selectively allowing the benefit of Rule 25(a). The law, as recognised by this Court in Deokinandan Prasad [Deokinandan Prasad v. State of Bihar, (1971) 2 SCC 330 : AIR 1971 SC 1409] and Syed Yousuddin Ahmed [State of A.P. v. Syed Yousuddin Ahmed, (1997) 7 SCC 24 : 1997 SCC (L&S) 1587] unequivocally states that the pension payable to an employee on retirement shall be determined on the rules existing at the time of retirement. However, the law does not allow the employer to apply the rules differently in relation to persons who are similarly situated.

30. The precedents discussed hereinabove lent support to our view that there is a dichotomy insofar as the employees of the L.N Mishra Institute; both the teaching and non-teaching included, insofar as the persons who retired between the date of the original notification bringing in the Rules of 2017 and 23.07.2024, when Rule 9 stood amended by a notification in the Official Gazette. The former would be entitled to pension and the latter will have to challenge the amendment now carried out. The Rules of 2017, with Rule 9 as originally framed would be applicable to all those persons, who retired between the interregnum.

31. Insofar as the persons, who are still serving,



necessarily the amendment made would apply; subject only to any challenge made by them. While declaring the eligibility to pension under the Old Scheme, for all those persons regularly absorbed to the services of the L.N Mishra Institute after its take-over, regularized prior to 01.09.2005, who also retired between the Gazette notification of the Rules of 2017 and 23.07.2024; we leave the serving employees to challenge the amendment made as per the Official Gazette notification issued on 23.07.2024.

32. The learned Advocate General relied on *Sri B.K.Srinivasan & Anr. v. State of Karnataka & Ors., AIR 1987 SC 1059* and a decision of a Division Bench of this Court in *Supreme Road Transport Private Limited vs. The State of Bihar & Ors., 2015(1) PLJR 994*, to contend that in certain cases, even if there is no publication in the gazette; the rules can be implemented if there is sufficient information passed on to the affected people, regarding the rules framed. In the present case, though the Rules of 2017 were promulgated, immediately thereafter, Rule 9 was kept in abeyance, which was in the knowledge of all the employees of the L.N Mishra Institute; regardless of their status of employment whether it be regular, adhoc or contractual, is the argument. The subsequent



amendment made in the rules in the very same year was also brought to the notice of all the employees, who cannot now turn around and challenge it only on the ground of the amendment having not been published in the official gazette. It is also pointed out that this creates an anomalous situation insofar as the serving employees and those retired between the interregnum of five years.

33. **B.K.Srinivasan** (supra) relied on by the learned Advocate General, in Paragraph 15, categorically held that “*where the parent statute prescribes for mode of publication or promulgation that mode must be followed*”(sic). Even when the parent statute is silent and the subordinate legislation itself prescribes the manner of publication, that mode of publication would be sufficient, if reasonable. Only if the subordinate legislation does not prescribe the mode of publication or it prescribes a plainly unreasonable mode, it takes effect only when it is published through a customarily recognized official channel, namely, the official gazette or some other reasonable mode of publication. In the present case, the dictum which has application is the categorical declaration that when the statute prescribes for a specific mode of publication or promulgation that mode must be followed.



34. The decision of the Division Bench in ***Supreme Road Transport Private Limited*** (supra) is also of no help, since though the subject rule did not specifically mandate a notification, published in the official gazette; the learned Judges held in para 53, that the notification issued by the Commissioner under Rule 40(2) of the Rules is to be compulsorily published in the official gazette. But the impugned notification was upheld, finding it to be mere instruction in generating ‘Suvidha’; applicable to goods in transit.

35. One other issue argued by the learned Advocate General is another dichotomy in the status of the petitioners; i.e., some of them having been in the service of the Institute prior to the takeover and the others appointed after the takeover; the former alone being regulated by the Rules of 2017. In answering the above contention, we have to look at both the Act and the Rules. The Act of 1987 specifically was for takeover of L.N Mishra Institute; vesting the said Institute absolutely in the State Government free from all encumbrances. Insofar as Section 6 is concerned, the nominal heading is and it speaks of *determination of terms of services of the teaching staff and other employees of the institution*. This applies only to those persons who, from the date of notification, cease to be the



employees of the Institution as it earlier existed and their continuance would be either on an *ad hoc* basis or till a decision is taken under sub-section (3) by the State Government to continue them on an *ad hoc* basis for a fixed term or on contract or absorb them in Government service. The power to frame rules is to be found from Section 11. The power granted by sub-section (1) of Section 11 enables and empowers the State Government to make rules in the official gazette for carrying out the purposes of the Act. The purpose of the Act was takeover of the Institution and it was not confined to determination of continuance or discontinuance of the existing staff or their employment status; if decided to be continued in service. The determination of employment status of teaching and non-teaching staff is one of the aspects dealt with by the Act of 1987; specifically, by Section 6. The power to prescribe rules, however, encompasses the entire Institute which has been taken over by the State.

36. As far as Rules of 2017, Rule 1 dealing with the *Short title, extent commencement and application*; notifies the title in sub-rule (1), its implementation with immediate effect in sub-rule (2), and its extension confined to Lalit Narayan Mishra Economic Development and Social Change Institute in sub-rule



(3). We extract sub-rule (4), which is as follows:-

“(4) These Rules will also apply to whole time working teachers/Non-teaching employees working at the time of taking over of the Institution whose adjustment has been made by the State Government.”

37. The above extract and specifically the emphasized portion (emphasis made by us) makes it clear that it extends to the entire Institute and its employees; to which it is confined. It also takes in those whole-time working teachers/non-teaching employees who were in the service of the Institute at the time of takeover. We find absolutely no dichotomy in status of employment of those existing at the time of takeover and those appointed later; if the former had been adjusted as per Section 6 of the Act in the service of the State Government, for the purpose of application of the Rule. The Rule applies to all the employees of the Institute; those regularized after takeover and those appointed thereafter.

38. Now, we have to look at the individual facts of the writ petitions.

39. CWJC No. 644 of 2023 projects the case of two writ petitioners. The first of them having been appointed on 18.04.1986 and the 2nd appointed on 17.08.1987. They were



obviously employees of the Institute prior to the take over and by Annexure-12 dated 03.05.2006, their '*adjustment has been made by the State Government*'; by regularizing them as per Annexure-12. The 1st petitioner retired on 31.01.2024, which makes him eligible for pension under the Old Pension Scheme as per Rule 9 of the originally promulgated Rules of 2017. Insofar as the 2nd petitioner is concerned, he is still in service and we make no observation regarding his eligibility; but leave him to challenge the amended rule, now notified, if he so desires.

40. Insofar as CWJC No. 10463 of 2018 is concerned, the petitioners were persons appointed after the takeover. The writ petitioners were terminated from service, but as per Annexure-P/18 judgment, they were directed to be reinstated. In compliance of the directions of this Court, the Joint Secretary-cum-Director, Human Resource Development (Higher Education) Department, Government of Bihar, Patna has reinstated the petitioners by Annexure-32 order dated 17.07.2006, which makes them regular employees of the Institute. The 2nd petitioner retired in 2017, 25th petitioner retired in January, 2018, petitioners 10 and 11 retired in January, 2019, 13th petitioner retired in 2022, petitioners No. 9, 12, 18 &



20 retired in 2023 and petitioners No. 8, 15, 19 & 21 retired in January, 2024. The retirement date of petitioner No. 7 is not clear. The other petitioners are still working in the Institute. Those who have retired in the interregnum between the Rules of 2017 and its amendment as per the notification dated 23.07.2024, would be entitled to pension under the Old Pension Scheme. The other petitioners would be left to challenge the notification now issued for amendment of the Rules of 2017.

41. CWJC No. 20846 of 2018 projects the case of only one petitioner, who was in service while the takeover was effected and who was regularised as per Annexure-P/35 in CWJC No. 10463 of 2018. He has retired in December, 2021 and would be entitled to pension under the Old Pension Scheme.

42. CWJC No. 17263 of 2018 also projects the case of only one employee, who has retired on 31.03.2021. He was appointed initially on 08.07.1987 as is indicated from Annexure-3 and was regularized from the date of his appointment i.e. 08.07.1987, as per Annexure-6 produced in the writ petition. The petitioner would also be entitled to pension under the Old Pension Scheme.

43. CWJC No. 22613 of 2018 is concerned with two petitioners, both of whom were appointed on 09.11.1987 after



the Act of 1987. Both of them retired on 30.11.2017, they were earlier terminated on 08.01.2005 and as per Annexure-4 judgment, they were reinstated on 14.07.2006 as per Annexure-6. The petitioners having been regularly appointed; they would be entitled to pension under the Old Pension Scheme since they have retired as on 30.11.2017.

44. The writ petitions are disposed of with the above directions and reservation in so far as the amendment made to Rule 9; effective from 23.07.2024.

45. Interlocutory applications, if any, shall also stand closed.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

Ranjan/Aditya/Sujit

AFR/NAFR	AFR
CAV DATE	14.08.2024
Uploading Date	27.08.2024
Transmission Date	

