IN THE HIGH COURT OF JUDICATURE AT PATNA

LETTERS PATENT APPEAL No.1940 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 21893 of 2011

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1. Bihar State Ardh Sarkari Arajpati Karamchari Maha Sangh, Krishi Udyog Bhawan, Sinha Library Road, Patna through its General Secretary Awadh Kishore Sharma, S/o- Late Vishwanath Sharma.
2. Awadh Kishore Sharma, S/o- Late Vishwanath Sharma, resident of Village & P.O.- Belchi, P.S.- Chandi, District- Nalanda
3. Yogendra Jha, S/o- Late Jaikant Jha, resident of Mitra Mandal Colony, Block-A, Plot No. 24, Phulwarisharif, District- Patna.
4. Shankar Dayal Singh, S/o- Late Sudama Singh, Resident of Virkumar Singh Colony, Ramjiwan Chouk, Hajipur, District- Vaishali.
5. Jagdish Mandal, S/o- Sri Lakhan Mandal, Resident of Village- Rahtoli, P.O.- Sripur Gahar, Via Elmaspur, District- Samastipur.
6. Lakhan Prasad, S/o- Late Ram Bahadur, Resident of Dhelwan House, Poorandarpur, Near Old Jakkanpur Thana, Jakkanpur, District- Patna.
7. Balmiki Sharma, S/o- Late Dudheshwar Sharma, Resident of Village- Kanauti, P.O.- Kazisarai, P.S.- Makhdoompur, District- Jehanabad.
8. Sheo Kumar Yadav, S/o- Late Munshi Yadav, Resident of Village- Bhagjoga, P.S.- Paliganj, District- Patna.
9. Ram Narain Bhanu, S/o- Late Banarsi Hari Resident of Village- Bhilkhanpur, P.O.- Head Office, Bhagalpur, District- Bhagalpur.
10. Vinod Bihari Singh, S/o- Sri Ram Lakhan Singh, Resident of Mohalla-Chandpur Bella, Azad Lane, P.O.- GPO, District- Patna
11. Pawan Kumar Singh, S/o- Late Bholam Prasad Singh, Resident of Mohalla-Kurji, P.O.- Sadakat Ashram, P.S.- Digha, District- Patna.
12. Shyam Sundar Rai, S/o- Sitab Rai, Resident of Mohalla Saristabad, P.O,- Anisabad, P.S.- Gardanibagh, District- Patna.
13. Bishnu Dayal Singh, S/o- Ram Swarath Singh, Resident of Nilam Bhawan, Nil Nagar, B.D. Lane, Hardwar Road, P.S.- Digha, District- Patna.
14. Sushil Kumar Jha, S/o- Late Ramashankar Jha, Resident of Village- Ujjan, P.O.- Dharempur, District- Darbhanga.

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15. Shiv Shankar Srivastava, S/o- Late Sant Prasad, Resident of New Alphabad Colony, Lalapur Par, Bajrangpuri, P.O. & P.S. Gulzarbagh, District- Patna.
16. Praduman Prasad Roy, S/o- Late Baikunth Roy, Resident of Village- Digha Ghat (Pokhar) P.O. & P.S.- Digha, District- Patna.
17. Harilal Yadav, S/o- Late Sabliak Yadav, Resident of Village- Alhampura, P.O.- Bihta, District- Patna.
18. Ram Vinay Rai, S/o- Late Chitan Rai, Resident of Village- Pavitra Nagar, P.O.- Harnahi, District- Sheohar.
19. Satyendra Prasad, S/o- Late Lal Bihari Rai, Resident of Village- Sabar Chak, P.O.- Sorampur, District- Patna.
20. Sheo Nandan Mehta, S/o- Late Mishrilal Mehta, Resident of Village & P.O.- Sakhua, P.S.- Pipra Bazar, District- Supaul.
21. Ram Nanda Prasad, S/o- Late Sipahi Prasad, Resident of Mohalla- Harnichak, Anishabad, P.S.- Gardanibagh, District- Patna.
22. Pradeep Kumar Rai Choudhary, S/o- Late Bijan Bihari Choudhary, Resident of Janki Apartment, Flat No. 403, R.K. Avenue Road, P.O.- Rajendra Nagar, P.S.- Kadam Kuan, District- Patna.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
4. The State of Jharkhand through the Chief Secretary, Government of Jharkhand, Ranchi.
5. Bihar State Agro-Industries Development Corporation Ltd. Krishi Udyog Bhawan, Sinha Library Road, Patna- 800001 through the Managing Director
6. The Bihar State Medicine and Chemical Development Corporation Block-A, 5th Floor, Maurya Lok Complex, Dakbunglow Road, Patna- 800001 through the Managing Director
7. Bihar State Construction Corporation Ltd. Null Khwaja Imali, Anisabad, Patna- 800002 through the Managing Director
8. The Bihar State Handloom & Handicraft Corporation Udyog Bhawan, East Gandhi Maidan, Patna- 800004 through the Managing Director.
9. Bihar State Vastraya Corporation Khadi Gram Udog Bhawan, East Gandhi

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Maidan, Patna- 800004 through the Managing Director

10. Bihar State Industrial Development Corporation Indira Bhawan, Boring Canal Road, Ramcharita Singh, Patna-800000 through the Managing Director.
11. Bihar State Electronic Development Corporation Beltron Bhawan, Shastri Nagar, Patna-800023 through the Managing Director
12. Bihar State Export Corporation, Land Development Bank Building, 5th Floor, Budh Marg, Patna.- 800001 through the Managing Director.
13. Bihar State Forest Development Corporation, Patliputra Colony, Patna- 800013 through the Managing Director
14. Bihar State Sugar Corporation Udyog Bawan, 3rd Floor, East Gandhi Maidan, Patna- 800004 through the Managing Director
15. Bihar State Leather Corporation, Udyog Bhawan, 3rd Floor, East Gandhi Maidan, Patna.- 800004 through the Managing Director
16. Bihar State Finished Leather Corporation, Udyog Bhawan, 3rd Floor, East Gandhi Maidan, Patna- 800004 through the Managing Director.
17. Bihar State Panchayati Raj Financial Corporation, New Secretariat, 2nd Floor, Bailey Road, Patna- 800001 through the Managing Director.

.... Respondents

with

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LETTERS PATENT APPEAL No. 88 of 2016

Arising out of

Civil Writ Jurisdiction Case No. 21893 of 2011

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

.... Appellants/Respondents

Versus

1. Bihar State Ardh Sarkari Arajpatrit Karamchari Maha Sangh, Krishi Udyog Bhawan, Sinha Library Road, Patna through its General Secretary Awadh Kishore Sharma, S/o- Late Vishwanath Sharma.

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2. Awadh Kishore Sharma, S/o- Late Vishwanath Sharma, resident of Village & P.O.- Belchi, P.S.- Chandi, District- Nalanda
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P.O.- Sorampur, District- Patna.

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……..Respondents/Writ petitioners

1. The State of Jharkhand through the Chief Secretary, Government of Jharkhand, Ranchi.

2. Bihar State Agro-Industries Development Corporation Ltd. Krishi Udyog Bhawan, Sinha Library Road, Bihar State Agro-Industries Development Corporation Ltd. Krishi Udyog Bhawan, Sinha Library Road, Patna-800001 through the Managing Director.

3.The Bihar State Medicine and Chemical Development Corporation Block-A, 5th Floor, Maurya Lok Complex, Dakbunglow Road, Patna- 800001 through the Managing Director

4. Bihar State Construction Corporation Ltd. Null Khwaja Imali, Anisabad, Patna-800002 through the Managing Director
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14. Bihar State Panchayati Raj Financial Corporation, New Secretariat, 2nd Floor, Bailey Road, Patna- 800001 through the Managing Director.

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Appearance :

(In L.P.A. No.1940 of 2015)

For the Appellants : Mr. Basant Choudhary, Sr. Advocate.

For the State of Bihar : Mr. Lalit Kishore, PAAG-I
Mr. Bishwa Bibhuti Kumar Singh, Advocate

For Respondent No. 10 : Mr. Rajeev Ranjan Prasad, Advocate
Mr. Sudhanshu Trivedi, Advocate
Mr. Abhishek Singh, Advocate
Ms. Seema, Advocate
Ms. Nishi Nath Ojha, Advocate

(In L.P.A. No. 88 of 2016)

For the Appellants : Mr. Lalit Kishore, PAAG-I
Mr. Bishwa Bibhuti Kumar Singh, A.C. to PAAG-I

For the Respondents : Mr. Basant Kumar Choudhary, Sr. Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 08-02-2017

The challenge in the present Letters Patent Appeals is to an order passed by the learned Single Bench of this Court on 4th

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of March, 2015 in C.W.J.C. No. 21893 of 2011 whereby, the claim of the writ-applicants i.e. appellants in L.P.A. No. 1940 of 2015 for payment of salary and other allowances was disposed of with direction to the State to allocate a sum of Rs. 10 Crores for payment to the affected employees for payment on account of various reasons such as marriage of daughters, ailment, old age disease, payment of loan etc. On deposit of the said amount, the Managing Director/Administrator was to examine the individual cases and to make recommendations depending on the merit of the case for release of fund in his/her favour. The writ applicants have filed appeal claiming entire pay and allowance from the State whereas, the State has filed appeal against the direction to deposit sum of Rs.10 Crores.

2. Firstly some facts. A writ application No. 488 of 2002 was filed in public interest in Supreme Court by Ms. Kapila Hingorani consequent to newspaper report regarding non-payment of salary for long time resulting in starvation and death of an employee of the Corporation wholly owned by the State of Bihar. In such petition, Supreme Court passed a detailed interim order since reported as Kapila Hingorani (I) Vs. State of Bihar (2003) 6 SCC 1. The question raised in the said petition was as to what extent the State of Bihar is vicariously liable for payment of arrears of salary to the employees of State-owned Corporations, Public Sector Undertakings

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or Statutory Bodies. It was brought to the notice of the Court that certain Boards and Corporations are not able to pay the salary to the employees.

3. The Supreme Court noticed the fact that the Company incorporated under the Companies Act is a juristic person which has a distinct and separate entity vis-à-vis its shareholders.

4. With this background, the Court in the aforesaid case reported as Kapila Hingorani (I)'s case (Supra) observed as under:-

> "30. The government companies/public sector undertakings being "States" would be constitutionally liable to respect life and liberty of all persons in terms of Article 21 of the Constitution of India. They, therefore, must do so in cases of their own employees. The Government of the State of Bihar for all intent and purport is the sole shareholder. Although in law, its liability towards the debtors of the company may be confined to the shares held by it but having regard to the deep and pervasive control it exercises over the government companies; in the matter of enforcement of human rights and /or rights of the citizen to life and liberty, the State has also an additional duty to see that the rights of employees of such corporations are not infringed.
>
> 33. The State having regard to its right of supervision and/or deep and pervasive control, cannot be permitted to say that it did not know the actual state of affairs of the State Government undertakings and/or it was kept in the dark that the salaries of their employees had not been paid for years leading to starvation death and/or commission of suicide by a large number of employees. Concept of accountability

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arises out of the power conferred on an authority.

34. The State may not be liable in relation to the day-to-day functioning of the companies, but its liability would arise on its failure to perform the constitutional duties and functions by the public sector undertakings, as in relation thereto lie the State's constitutional obligations. The State acts in a fiduciary capacity. The failure on the part of the State in a case of this nature must also be viewed from the angle that the statutory authorities have failed and/or neglected to enforce the social-welfare legislations enacted in this behalf e.g. Payment of Wages Act, Minimum Wages Act etc. Such welfare activities as adumbrated in Part IV of the Constitution of India indisputably would cast a duty upon the State being a welfare State and its statutory authorities to do all things which they are statutorily obligated to perform.

74. We, however, hasten to add that we do not intend to lay down a law, as at present advised, that the State is directly or vicariously liable to pay salaries/remunerations of the employees of the public sector undertakings or the government companies in all situations. We, as explained hereinbefore, only say that the State cannot escape its liability when a human rights problem of such magnitude involving the starvation deaths and/or suicide by the employees has taken place by reason of non-payment of salary to the employees of public sector undertakings for such a long time. We are not issuing any direction as against the State of Jharkhand as no step had admittedly been taken by the Central Government in terms of Section 65 of the State Reorganisation Act and furthermore as only four public sector undertakings have been transferred to the State of Jharkhand in respect whereof the petitioner does not make any grievance."

5. After observing so, the Court issued interim directions directing the State of Bihar to deposit a sum of Rs. 50

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crores for disbursement of salaries to the employees of the Corporations. In a later interim order since reported as Kapila Hingorani (II) Vs. State of Bihar, (2005) 2 SCC 262 the Supreme Court directed the State of Bihar to deposit another sum of Rs. 50 crores. The Court observed as under:-

> "25. The State of Bihar in response to the applications filed by the petitioner herein cannot, in our opinion, be permitted to raise questions which have expressly been rejected. It cannot seek a review of the said judgment indirectly which it could not do directly. Even for such matters, an application for clarification would not be maintainable. (See Ram Chandra Singh v. Savitri Devi, (2004) 12 SCC 713.)
>
> 26. We, therefore, do not appreciate the stand taken by the State of Bihar now that it does not have any constitutional obligation towards a section of citizens viz. the employees of the public sector undertakings who have not been paid salaries for years.
>
> 37. We make it clear that we have not issued the aforementioned directions to the States of Bihar and Jharkhand on the premise that they are bound to pay the salaries of the employees of the public sector undertakings but on the ground that the employees have a human right as also a fundamental right under Article 21 which the States are bound to protect. The directions, which have been issued by this Court on 9-5-2003 (1995) 3 SCC 413 as also which are being issued herein, are in furtherance of the human and fundamental rights of the employees concerned and not by way of an enforcement of their legal right to arrears of salaries. The amount of salary payable to the employees or workmen concerned would undoubtedly be adjudicated upon in the proper proceedings. However, these directions are issued which are necessary for their survival. Undoubtedly, any amount paid by Justice Uday

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> Sinha Committee pursuant to these directions shall be duly credited for."

6. Subsequently, the Supreme Court passed an order on 9th of August, 2010 disposing of the writ application that the issues involved in these cases are legal issues, therefore, the High Court was requested to examine these matters in Public Interest Litigation and pass appropriate orders expeditiously. The order reads as under:-

> "The issues involved in these cases basically are legal issues. They will have to be gone into by the concerned High Courts. This Court has so far monitored the matter to its best possible ability. In the circumstances, we request the High Court to examine these matters in the PIL and pass appropriate orders in these PILs as expeditiously as possible. The Registry is directed to forward copy of this order to the Registrar General of the High Court. The attention of the Hon'ble Chief Justice of the High Court may be drawn to this order. We request the High Court to consider the orders passed by this Court giving appropriate directions from time to time in these cases. We also direct the High Court to consider making interim payments to the affected persons including medical treatment.
>
> The writ petitions are disposed of accordingly.
>
> In view of the order passed in the writ petition, no orders are required to be passed on the interlocutory applications."

7. A separate Public Interest Litigation was initiated *suo motu* by this Court leading to C.W.J.C. No. 11640 of 2003. The Bench who was monitoring the disbursement of funds released by the

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Government towards payment of terminal benefits to the employees of the Corporation through Justice retired Uday Sinha Committee with directions of the Hon'ble Supreme Court disbursed a sum of Rs. 1,24,81,20,863.78 crores out of the total amount of Rs. 125 crores deposited by the State. Such payment was 9 per cent of the salary for the period February, 1997 to November, 2003 as an interim measure. The Committee mentioned that if the full salary till November, 2003 has to be paid, the amount required will be Rs. 200 crores and for salary due and payable up to 2006, a further sum of Rs. 150 crores would be required. Keeping in view retrial benefits payable to the employees, a sum of Rs. 500 crores would be required.

8. After the orders of the Supreme Court, the Committee was ordered to be wound up on 17th of September, 2007 by this Court and later, on 31st of August, 2010 the *suo motu* Public Interest Litigation Petition was disposed of as it was observed that the cause of action does not survive. Liberty was given to any individual to approach the appropriate forum. In terms of the direction of the Supreme Court, C.W.J.C. No. 20645 of 2010 (Awadh Kishore Sharma Vs. The State of Bihar & Ors.) was preferred consequent to an order passed by the Hon'ble Supreme Court on 9th of August, 2010. The Writ Petition was dismissed on 17th of May, 2011 with liberty to any individual to approach the appropriate forum.

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9. It is thereafter, the present petition has been filed, *inter alia*, pointing out that 4624 are the total employees of 13 Corporations or Companies wholly owned by the State of Bihar. The grievance is that such employees have not been paid their wages for years together though the State is the sole shareholder of such Corporations/ Companies. Reliance was placed upon the aforesaid two interim orders passed by the Hon'ble Supreme Court.

10. Special Leave Petition No. 14474/2011 (Kapila Hingorani Vs. State of Bihar & Ors.) was filed before the Hon'ble Supreme Court against the order dated 17th of May, 2011 passed in C.W.J.C. No. 20645 of 2010). Such Special Leave Petition was disposed of on 12th of September, 2011 when the following order was passed:-

> "In our Order dated 9th August, 2010, we had indicated that the case needs to be monitored by the High Court and, in that connection, we directed the High Court to consider making interim payments to the affected persons, including medical treatment. We may clarify that only an affected person has to approach the High Court and if an application is made by him/her, then, in the course of monitoring, the High Court may consider the claim made by such affected person, who has to be one of the employees of the State Public Sector Undertaking."

11. It is thereafter, the present writ application was filed out of which the present appeals have arisen for consideration

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before this Court.

12. At the time of hearing, the writ applicants referred to another order of the Supreme Court reported as State of Jharkhand and another Vs. Harihar Yadav and others, (2014) 2 SCC 114. The said order came to be passed in an appeal against an order passed by the High Court of Jharkhand at Ranchi in L.P.A. No. 77 of 2009 on 16th of June, 2011. In Harihar Yadav's case (supra) the Supreme Court was seized of one Corporation wherein direction was issued for payment of salary from 1-1-1995 till 29-12-2001. The issue in the aforesaid case was as to which State is responsible for bifurcated Bihar Hill Area Lift Irrigation Corporation Ltd. after bifurcation of the State of Bihar. The Supreme Court considered the issue in view of Humane Problem of great magnitude frescoed on the Constitutional canvas. Relevant extract of the said judgment reads as under:-

> "23. Thereafter the Court adverted to the concept of human rights, the duty of the constitutional court, financial stringency and other aspects and expressed thus: [Kapila Hingorani (I) v. State of Bihar, (2003) 6 SCC 1, SCC p. 34, paras 72 & 74]
>
> "xxx xxx xxx"
>
> 57. If the present factual matrix is tested on the anvil of the aforesaid principles, there can be no trace of doubt that both the States and the Corporations have conveniently ostracised the concept of "model employer". It would not be wrong to say that they have done so with Pacific calmness, sans vision, shorn of responsibility and oblivious of their role in such a situation. Their action reflects the attitude of

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emotionlessness, proclivity of impassivity and deviancy with cruel impassibility. Neither of the States nor the Corporations have even thought for a moment about the livelihood of the employees. They have remained totally alien to the situation to which the employees have been driven to. In a State of good governance the Government cannot act like an alien. It has an active role to play. It has to have a constructive and progressive vision. What would have ordinarily happened had there not been a bifurcation of the State and what fate the employees of BHALCO would have faced is a different matter altogether. The tragedy has fallen solely because of the bifurcation. True it is, under the law there has been bifurcation and the Central Government has been assigned the role to settle the controversies that had to arise between the two States. But the experimentation that has been done with the employees as if they are guinea pigs is legally not permissible and indubitably absolutely unconscionable. It hurts the soul of the Constitution and no one has the right to do so.

59. Keeping in view the totality of facts and circumstances of the case and taking note of the concept of social justice under the Constitution, role of a model employer in a welfare State and the conduct of both the States we proceed to issue the following directions:

59.1. The employees who were paid a certain amount after this Court had directed for deposit of rupees fifty crores by the State of Bihar and have not been absorbed by JHALCO, they should be paid their salary from 1-1-1995 till 29-12-2001.

59.2. The State of Bihar shall comply with the directions within a period of three months from today as they are aware of the names of employees who had been paid proportionally out of the deposit made earlier.

59.3. The State of Jharkhand shall pay from 29-12-2001 till 13-9-2004. We have fixed the cut-off date for the

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State of Jharkhand as it had issued the Notification on 29-12-2001 creating an erroneous impression and confusion. The date for the State of Bihar has been determined regard being had to the date the Central Government took a decision asking the State of Bihar to go for liquidation.

59.5. The State of Bihar shall deduct the amount already paid by virtue of the order (Kapila Hingorani (1) v. State of Bihar, (2003) 6 SCC 1) passed by this Court. However, the State of Jharkhand shall pay the entire amount of salary for the period as directed by us as it is clear from the record that it has not paid anything to the employees.

59.6. Both the States shall compute the salary component after granting the benefit of pay revision which has been extended to other employees."

13. With this factual background, two appeals were preferred, one by the writ-applicants claiming direction to the State for payment of the entire salary and allowances to the employees of the Corporations and another appeal filed by the State against the direction to deposit Rs. 10 crores to meet the emergent financial requirements of the deserving families.

14. To controvert the argument of learned counsel for the appellants, Mr. Lalit Kishore refers to a Full Bench judgment of this Court reported as Manikant Pathak & Ors. Vs. The State of Bihar & Ors., 1997 (1) PLJR 664 to contend that there is clear distinction between Government and the Government companies created by statute, called statutory Corporations, and the

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Corporations/Companies incorporated under the Companies Act. It was argued that the liability of an entity under a statute would be governed by the provisions of the Statute. The relevant extract from the judgment reads as under:-

> "15. The distinction between Government companies created by statute, called statutory Corporations, and the Corporations/Companies incorporated under the statute such as Companies Act, however, should be kept in mind. Such distinction was pointed out in **Praga Tools Corporation** (supra) as well as in **Heavy Engineering Majdoor Union** (supra). By reason of the subsequent decisions the distinction, so far as the question of its legal character for the purpose of exercise of writ jurisdiction of the High Court is concerned, no longer stands. But for the purpose of determining the liability of the State in the matter of payment of salary etc. to the employees of such Corporations or Companies, the distinction remains as before. These cases in hand related to the incorporated Companies i.e. Companies created under the Companies Act by Incorporation and, therefore, it is not at all necessary to make a detailed discussion regarding statutory Corporations or Companies. Suffice it to say that so far as the question of liability of the State in the context of employees of statutory Corporations is concerned, it would depend on the provisions of the statute concerned.
>
> 18. The argument of the counsel for the petitioners, therefore, cannot be summarily rejected. In the facts of the present case. I am rather inclined to agree with the counsel that it is really the State Government which has been carrying on the activities through these Corporations. The Corporations are like 'extension counters' of the Government Departments. Even so, in view of the decision in the **HEC case** and other cases mentioned above, I am unable to issue any

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direction to the State Government to pay salary to their (Corporations') employees. In none of the subsequent cases so far, the Supreme Court has gone to the extent of holding that the State is responsible for the liability of the incorporated companies. The horizons of the administrative law and constitutional law are expanding. By virtue of the judgments of the Supreme Court the matters and objects which earlier lay beyond the scope of judicial review are now amenable to writ jurisdiction of the High Court and subject to judicial scrutiny. Perhaps, the days are not far off when the distinction between Companies/Corporations and incorporated Government Companies may be done away with. Within the Parameters of the law, as it stands, however, it is not possible for this Court to issue any direction to the State for payment of salary to the employees of these Corporations.

19. I am, therefore, of the opinion that the petitioners cannot maintain their claim against State of Bihar. They are entitled to reliefs only against the respective Corporations, namely, Bihar Finished Leathers and the Bihar State Agro Industries Development Corporation. The Corporations have, however, come with a plea that they have no fund and resources from which salary can be paid to the employees. In such a situation, in my opinion, apart from issuing a direction to them to pay the salary to the employees, the proper direction to be issued would also be for the winding up of the Corporations. Section 433 of the Companies Act provides for the situation where a company may be wound up by the Court. A company may be wound up under Section 433, *inter alia*, where it is unable to pay its debt under clause (e) or where the Court is of the opinion that it is just and equitable that the company should be wound up. In my opinion, the case comes under both the clauses. I would, therefore, direct the State Government to file winding up petition in this Court if the two Corporations are not able to pay salary to their

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> employees within a period of four months and revive themselves as viable enterprises, so that the assets of the companies may be sold and the salary etc. are paid to the employees, in accordance with the provisions of the Companies Act."

15. Relying upon the said judgment and the observations of the Hon'ble Supreme Court in Paragraph 74 of Kapila Hingorani (I) and Paragraph 37 of Kapila Hingorani (II), it is argued that there is no conclusive finding returned in the two cases about the liability of the State to pay the salary and allowances and retrial benefits of the employees appointed by the Boards, Corporations and Companies as even if the State Government is the sole shareholder, the identity of the Company is that of a separate juristic person than the State and the employees having been appointed by the Boards, Corporations and the Companies have to seek their remedy against their employer and not against the State as each of the Board, Corporation and Company is separate juristic entity. It is argued that in Kapila Hingorani (I) and Kapila Hingorani (II), the Supreme Court has ordered for disbursement of a sum of Rs. 125 crores to mitigate the humane problems and has not conclusively held that the State Government is liable to pay salary and allowances and retrial benefits to the employees of the Boards, Corporations and the companies. It is also argued that in Kapila Hingorani (I) and Kapila Hingorani (II), the

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judgment of the Full Bench of this Court has not been set aside. It is further argued that Kapila Hingorani (I) and Kapila Hingorani(II) have been considered in the judgments reported as State of U.P. and another Vs. Uptron Employees' Union, CMD and others, (2006) 5 SCC 319 and State of Assm Vs. Barak Upatyaka D.U. Karmachari Sanstha, (2009) 5 SCC 694 wherein, it has been held that the State would not be liable to pay wages to the employees of the Boards, Corporations and the Companies incorporated with the State as a sole shareholder.

16. The Supreme Court has left the legal issues to be decided by the High Courts, and that there is no conclusive finding in paragraph 74 of Kapila Hingorani (I) and Paragraph 37 of Kapila Hingorani (II) that the State as a sole shareholder is bound to pay salary and allowances of the Corporations who have run into financial difficulties.

17. We have heard learned counsel for the parties in the light of the said arguments and find that the following issues require adjudication :-

(1). Whether the State of Bihar being a sole shareholder of the Boards, Corporations or the Companies incorporated under the Companies Act, 1956 have the responsibility to pay salary and allowances of the employees of the Boards,

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Corporations and Companies who are unable to pay salary on account of financial constraints.

(2). Whether there is any final direction on the basis of interim orders passed in Kapila Hingorani (I) and Kapila Hingorani (II), when the matter was remitted back to this Court to examine the legal issues.

(3). Whether the observations made in Kapila Hingorani (I) and (II) are to address the humane problems faced by certain employees of the Boards and Corporations alone.

(4). Whether the judgment in Harihar Yadav's case mandates the State of Bihar to pay salary of the employees of all Boards, Corporations and Companies having huge financial burden and whether such financial burden can be passed on to the State of Bihar when the financial allocation towards the salary and allowances of the Boards, Corporations and Companies is a policy decision in economic matters.

QUESTION NO. 1

18. The Boards, Corporations and the Companies incorporated with the State as a sole shareholder or a majority shareholder are but a separate juristic entity. They are governed by a Statute. If the employees of the Company are not being paid wages, they have the priority over their wages which are secured debts in

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terms of Section 529A of the Companies Act, 1956. The salary of the workmen as secured creditors takes *pari passu* charge with the other secured creditors. If the State has to bear financial burden, the mechanism of establishing separate companies for focused growth of an area loses its object and purpose. The companies are established to give flexibility in the decision making process and to focus on the target area free from the probable bureaucratic red tapism. If such companies have to be treated as part of the State Government, the very purpose of establishing and creating companies is otiose. The employees of the Corporation have joined the companies knowing very well that their wages are charged over the assets of the company in terms of Section 529A of the Companies Act. Having worked under a company and playing a role leading to financial distress, they cannot assert that the State is responsible for the salary and allowances by lifting the corporate wheel. Such Boards and Corporations are State for the purpose of enforcement of fundamental rights conferred under Part-III of the Constitution but the employees of such Boards and Corporations cannot assert that they are employees of the State Government. They will continue to be employees of the Boards, Corporations and Companies. Though such Boards, Corporations and the Companies are amenable to writ jurisdiction but the parity is only in respect of invocation of writ

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jurisdiction and does not extend any further. If the State Government has to bear the financial burden, the liability of the State as well as applicants themselves would be 200+150+500 up to 2006. With more than a decade having been passed, the liability can very well be over one thousand crores. Can such huge liability be passed on to the State only to meet the humane problem.

19. In the case reported as State of Himachal Pradesh and others Vs. Rajesh Chander Sood and others, (2016) 10 SCC 77, the Court has held that can the employees of an organization raise a claim in law that the corporate body be not wound up despite its financial unworkability which is because the result would be that they would lose their jobs. The answer to the query has to be negative. The sustenance of the organization itself is of paramount importance. The claim of the employees who have been engaged by the organization to run the activities of the organization is of secondary importance. If an organization does not remain financially viable, the same cannot be required to remain functional only for the reason that its employees are not adversely impacted. It has been further held that when and how much is to be paid to employees of an organization is a policy decision. All these issues fall in the realm of executive determination.

20. The Constitution Bench in the case reported as Steel Authority of India Ltd. Vs. National Union Waterfront Workers,

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(2001) 7 SCC 1 held that the Government Companies, Corporations, Societies, even though they are subject to same limitation in the field of Public Law, Constitutional or Administrative Law, it does not lead to the inference that they become agents of the Centre/State Government for all purposes so as to bind such Government for all their acts, liabilities and obligations under various Central and/or State Acts or under private law. The Court observed as under:-

> "*37.* We wish to clear the air that the principle, while discharging public functions and duties the government companies/corporations/societies which are instrumentalities or agencies of the Government must be subjected to the same limitations in the field of public law—constitutional or administrative law—as the Government itself, does not lead to the inference that they become agents of the Centre/State Government *for all purposes so as to bind such Government for all their acts, liabilities and obligations under various Central and/or State Acts or under private law*.

21. In another two Bench judgment reported as State of U.P. and another v. Uptron Employees' Union, CMD and others, (2006) 5 SCC 319, examining Kapila Hingorani's case (supra), the Court held as under:-

> "**16.** It would, thus, appear that this Court did not lay down any principle of law of universal application and passed appropriate orders only in the compelling circumstances noticed by it. We are, therefore, satisfied that in respect of a sick industrial company, even if it be a subsidiary of a government company, there is no legal obligation cast

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> upon the State Government to pay the wages due to the workmen. The rights of workmen are governed by the relevant provisions of the Companies Act where their claim has been accorded priority. Moreover, in any view of the matter we find nothing in SICA which authorises BIFR to pass an interim order directing the State Government in such circumstances to pay the wages due to the employees of the sick industrial company. We, therefore, allow all these appeals and set aside the impugned orders."

22. In another two Bench judgment reported as State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha, (2009) 5 SCC 694, the employees of a Government Society were not being paid salary. The trade union of the employees filed a writ petition requiring the Government to bear and pay the salary of the employees of the Co-operative Societies. The Court considering the said plea and Kapila Hingorani (I and II) case, *inter alia*, held as under:-

> "**13.** If the salaries are not paid, the remedy of the employees of CAMUL is to proceed against CAMUL, in accordance with law, by approaching the forum under the appropriate labour legislation or the Cooperative Societies Act. But a trade union representing the employees of a cooperative society cannot, by filing a writ petition, require the Government to bear and pay the salaries of the employees of the cooperative society, howsoever pervasive, the control of the State Government, over such society. Nor is any right created to demand the continuance of financial assistance to a cooperative society, on the ground that such assistance has been extended by the Government, for several years.
>
> **20.** It is thus clear that directions were not based on legal right of the employees, but were made to meet a human

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right problem involving starvation deaths and suicides. But in the case on hand, relief is claimed and granted by proceeding on the basis that the employees of corporations/bodies answering the definition of "State" have a legal right to get their salaries from the State Government. In fact *Kapila Hingorani (I)(2003) 6 SCC 1* and *Kapila Hingorani (II)(2005) 2 SCC 262* specifically negative such a right.

21. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as *ratio decidendi*. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a *fait accompli* before the final hearing.

22. The observations and directions in *Kapila Hingorani (I) (2003) 6 SCC 1* and *Kapila Hingorani (II)(2005) 2 SCC 262* being interim directions based on tentative reasons, restricted to the peculiar facts of that case involving an extraordinary situation of human rights violation resulting in starvation deaths and suicides by reason of non-payment of salaries to the employees of a large number of public sector undertakings for several years, have no value as precedents. The interim directions were also clearly in exercise of extraordinary power under Article 142 of the Constitution. It is not possible to read such tentative reasons, as final conclusions, as contended by the respondent. If those observations are taken to be a final decision, it may lead to every disadvantaged group or every citizen or every unemployed person, facing extreme

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> hardship, approaching this Court or the High Court alleging human rights violations and seeking a mandamus requiring the State, to provide him or them an allowance for meeting food, shelter, clothing, salary, medical treatment, and education, if not more. Surely that was not the intention of *Kapila Hingorani (I)(2003) 6 SCC 1* and *Kapila Hingorani (II)(2005) 2 SCC 262*.
>
> **24.** We, therefore, reject the interpretation put forth by the respondent, on the tentative observations in *Kapila Hingorani (I)(2003) 6 SCC 1* and *Kapila Hingorani (II) (2005) 2 SCC 262*, to contend that the Government would be liable for payment of salaries and other dues of employees of the public sector undertakings. We are of the considered view that the decision of the High Court cannot therefore be sustained."

23. In another recent two Bench judgment reported as State of Himachal Pradesh and others Vs. Rajesh Chander Sood and others, (2016) 10 SCC 77 the Court was considering abolition of pension scheme extended to the Public Sector Boards and Corporations. The Court held as under:-

> "**88.** It is also not possible for us to accept that any court has the jurisdiction to fasten a monetary liability on the State Government, as is the natural consequence, of the impugned order passed by the High Court, unless it emerges from the rights and liabilities canvassed in the lis itself. Budgetary allocations, are a matter of policy decisions. The State Government while promoting the 1999 Scheme, felt that the same would be self-financing. The State Government never intended to allocate financial resources out of State funds, to run the pension scheme. The State Government, in the instant view of the matter, could not have been burdened with the

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liability, which it never contemplated, in the first place. Moreover, it is the case of the respondent employees themselves, that a similar pension scheme, floated for civil servants in the State of Himachal Pradesh, has also been withdrawn. The State Government has demonstrated its incapacity, to provide the required financial resources. We are, therefore, of the view that the High Court should not (as it could not) have transferred the financial liability to run the 1999 Scheme, to the State Government. Similar suggestions made by the corporate bodies concerned, cannot constitute a basis for fastening the residuary liability on the Government.

92. We shall now consider whether the State Government which had introduced the 1999 Scheme, had the right to repeal the same. In answering the above issue, it needs to be consciously kept in mind, that the employees of corporate bodies, who were extended the benefits of the 1999 Scheme, as already noticed above, were not employees of the State Government. The 1999 Scheme was, therefore, just a welfare scheme introduced by the State Government, with the object of ameliorating the financial condition of employees, who had rendered valuable service in State-owned corporations. In order to logically appreciate the query posed, we may illustratively take into consideration a situation, wherein an organisation similar to the one in which the respondent employees were engaged, suffered such financial losses, as would make the sustenance of the organisation itself, unviable. Can the employees of such an organisation, raise a claim in law, that the corporate body be not wound up, despite its financial unworkability? Just because the resultant effect would be that they would lose their jobs. The answer to the above query has to be in the negative. The sustenance of the organisation itself, is of paramount importance. The claim of employees who have been engaged by the organisation, to run the activities of the organisation, is of secondary importance. If

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an organisation does not remain financially viable, the same cannot be required to remain functional, only for the reason that its employees, are not adversely impacted. When and how a decision to wind up an organisation is to be taken, is a policy decision. The decision to wind up a corporation may be based on several factors, including the nature of activities rendered by it. In a given organisation, sometimes small losses may be sufficient to order its closure, as its activities may have no vital bearing on the residents of the State. Where, an organisation is raised to support activities on which a large number of people in the State are dependent, the same may have to be sustained, despite the fact that there are substantial losses. The situations are unlimited. Each situation has to be regulated administratively, in terms of the policy of the State Government. Whether a corporate body can no longer be sustained, because its activities are no longer workable, practicable, useable, or effective, either for the State itself, or for the welfare of the residents of the State, is for the State Government to decide. Similarly, when and how much, is to be paid as wages (or allowances) to employees of an organisation, is also a policy decision. So also, post-retiral benefits. All these issues fall in the realm of executive determination. No court has any role therein. For the reasons recorded hereinabove, in our considered view, the conditions of service including wages, allowances and post-retiral benefits of employees of corporate bodies, will necessarily have to be determined administratively, on the basis of relevant factors. Financial viability, is an important factor, in such consideration. In the facts and circumstances of the present case, it is not possible for us to accept the contention advanced on behalf of the respondent employees, that the State Government should provide financial support for sustaining the 1999 Scheme, at least for such of the employees, who were engaged on or before the date of issuance of the repeal Notification (2-12-

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> 2004). We would like to conclude the instant submission by recording that the respondent employees have not been able to make out a case that the Notification dated 2-12-2004, repealing the 1999 Scheme, was in any manner, capricious, arbitrary, illegal or uninformed, and as such, we would further conclude that the respondent employees cannot be considered as being entitled, to any relief, through judicial process."

24. In another two Bench judgment reported as A.K. Bindal and another Vs. Union of India and others, (2003) 5 SCC 163 the Court was considering the action of the Government in not providing budgetary support for the wage increase of the Public Sector Undertakings. The Court held as under:-

> "**17.** The legal position is that identity of the government company remains distinct from the Government. The government company is not identified with the Union but has been placed under a special system of control and conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire shareholding is owned by the Central Government will not make the incorporated company as Central Government. It is also equally well settled that the employees of the government company are not civil servants and so are not entitled to the protection afforded by Article 311 of the Constitution (*Pyare Lal Sharma* v. *Managing Director (1989) 3 SCC 448*). Since employees of government companies are not government servants, they have absolutely no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scale should be met by the Government. Being employees of the companies it is the responsibility of the companies to pay them salary and if the company is

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sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay scale, the petitioners cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay scales. It appears that prior to issuance of the office memorandum dated 12-4-1993 the Government had been providing the necessary funds for the management of public sector enterprises which had been incurring losses. After the change in economic policy introduced in the early nineties, the Government took a decision that the public sector undertakings will have to generate their own resources to meet the additional expenditure incurred on account of increase in wages and that the Government will not provide any funds for the same. Such of the public sector enterprises (government companies) which had become sick and had been referred to BIFR, were obviously running on huge losses and did not have their own resources to meet the financial liability which would have been incurred by revision of pay scales. By the office memorandum dated 19-7-1995 the Government merely reiterated its earlier stand and issued a caution that till a decision was taken to revive the undertakings, no revision in pay scale should be allowed. We, therefore, do not find any infirmity, legal or constitutional in the two office memorandums which have been challenged in the writ petitions.

22. In *South Malabar Gramin Bank* v. *Coordination Committee of S.M.G.B. Employees' Union and S.M.G.B. Officers' Federation (2001) 4 SCC 101* relied upon by the learned counsel for the petitioners, the Central Government had referred the dispute regarding the pay structure of the employees of the Bank to the Chairman of the National Industrial Tribunal headed by a former Chief Justice of a High Court. The Tribunal after consideration of the material placed before it held that the officers and employees

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of the regional rural banks will be entitled to claim parity with the officers and other employees of the sponsor banks in the matter of pay scale, allowances and other benefits. The employees of nationalised commercial banks were getting their pay scales on the basis of the 5th bipartite settlement and by implementation of the award of the National Industrial Tribunal, the employees of the regional rural banks were also given the benefits of the same settlement. Subsequently, the pay structures of the employees of the nationalised commercial banks were further revised by the 6th and 7th bipartite settlements but the same was not done for the employees of the regional rural banks who then filed writ petitions. It was contended on behalf of the Union of India and also the banks that financial condition of the regional rural banks was not such that they may give their employees the pay structure of the employees of the nationalised commercial banks. It was in these circumstances that this Court observed that the decision of the National Industrial Tribunal in the form of an award having been implemented by the Central Government, it would not be permissible for the employer bank or the Union of India to take such a plea in the proceedings before the Court. The other case, namely, *All India Regional Rural Bank Officers Federation* v. *Govt. of India(2002)3 SCC 554* arose out of interlocutory applications and contempt petitions which were filed for implementation of the direction issued in the earlier case, namely, *South Malabar Gramin Bank (2001) 4 SCC 101*. Any observation in these two cases to the effect that the financial capacity of the employer cannot be held to be a germane consideration for determination of the wage structure of the employees must, therefore, be confined to the facts of the aforesaid case and cannot be held to be of general application in all situations. In *Associate Banks Officers' Assn.* v. *State Bank of India (1998) 1 SCC 428* it was observed that many ingredients go into the shaping of the wage structure of

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> any organisation which may have been shaped by negotiated settlements with employees' unions or through industrial adjudication or with the help of expert committees. The economic capability of the employer also plays a crucial part in it; as also its capacity to expand business or earn more profits. It was also held that a simplistic approach, granting higher remuneration to workers in one organisation because another organisation had granted them, may lead to undesirable results and the application of the doctrine would be fraught with danger and may seriously affect the efficiency and at times, even the functioning of the organisation. Therefore, it appears to be the consistent view of this Court that the economic viability or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to function and may have to close down which will inevitably have disastrous consequences for the employees themselves. The material on record clearly shows that both FCI and HFC had been suffering heavy losses for the last many years and the Government had been giving a considerable amount for meeting the expenses of the organisations. In such a situation, the employees cannot legitimately claim that their pay scales should necessarily be revised and enhanced even though the organisations in which they are working are making continuous losses and are deeply in the red."

25. The resume of the precedents on the issue of the liability of the State Government to pay salary and allowances of the employees of the Boards, Corporations and the Companies of which State is a shareholder and are State within the meaning of Article 12, that there is unanimity that the State Government is not liable to pay

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salary and allowances as they are separate juristic entity. Therefore, neither in law, as the companies are separate and distinct juristic entity than the State Government, the State cannot be directed to pay salary and wages of the employees of such juristic entity.

26. The judgments in Kapila Hingorani (I) and Kapila Hingorani (II) have left the question of liability of the State Government to pay salary and allowances open. The intervention of the Supreme Court was to address humane problem of financial stringency suffered by such employees. Therefore, neither the Kapila Hingorani (I) nor Kapila Hingorni (II) or Harihar Yadav's case unequivocally holds the State Government responsible for payment of salary and allowances to the employees of the Boards, Corporations and the Companies, if such Boards, Corporations and the Companies are not able to pay salary and allowances due to financial stringency on any ground whatsoever.

QUESTION NO. 2

27. In Barak Upatyaka's case (supra), the Supreme Court has observed that the observations and directions in Kapila Hingorani (I) and Kapila Hingorani (II) are the interim directions based on tentative reasons and have no value as precedent. Such interim directions were given in extraordinary power under Article 142 of the Constitution. The Court held to the following effect:-

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> "**22.** The observations and directions in *Kapila Hingorani (I)(2003)6 SCC 1* and *Kapila Hingorani (II)(2005) 2 SCC 262* being interim directions based on tentative reasons, restricted to the peculiar facts of that case involving an extraordinary situation of human rights violation resulting in starvation deaths and suicides by reason of non-payment of salaries to the employees of a large number of public sector undertakings for several years, have no value as precedents. The interim directions were also clearly in exercise of extraordinary power under Article 142 of the Constitution. It is not possible to read such tentative reasons, as final conclusions, as contended by the respondent. If those observations are taken to be a final decision, it may lead to every disadvantaged group or every citizen or every unemployed person, facing extreme hardship, approaching this Court or the High Court alleging human rights violations and seeking a mandamus requiring the State, to provide him or them an allowance for meeting food, shelter, clothing, salary, medical treatment, and education, if not more. Surely that was not the intention of *Kapila Hingorani (I)(2003)6 SCC 1* and *Kapila Hingorani (II)(2005) 2 SCC 262*.

28. The final order of the Supreme Court is a direction to the High Court to examine the legal issues and that the legal issue requires to be examined by this Court is as to whether the State can be called upon to pay salary and allowances to the workers of the Boards, Corporations and Companies incorporated at one stage by the State Government. Therefore, the issue as to whether the State Government is liable for payment of salary and allowance has been

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left open by the Supreme Court for appropriate decision by this Court.

QUESTION NO. 3

29. The observations in Kapila Hingorani (I) and Kapila Hingorani (II) are in fact to address the humane problem as it left the question of liability of the State open. Reference may be made to Paragraph 74 in Kapila Hingorani (I) and Paragraph 37 of Kapila Hingorani (II).

30. Even in Harihar Yadav's case, the dispute was on account of bifurcation of the State and consequently, the liability of the State of Bihar and Jharkhand but again the problem was addressed as a humane problem.

QUESTION NO. 4

31. In view thereof, we do not find any merit in the Letters Patent Appeal filed by the writ-applicants bearing L.P.A. No. 1940 of 2015. The learned Single Bench has ordered the State to deposit Rs. 10 crores to meet any financial emergency required by any of the employees is without any mechanism as to how any claim of any of the employees can be examined and paid. We do not find that such direction warrants any interference in the present Letters Patent Appeals as it is to address the humane problem but we direct that Hon'ble Mr. Justice Udai Sinha shall constitute one member Committee to disburse the said amount in accordance with law and

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the procedure to be devised by him.

32. With the aforesaid direction, both the Letters Patent Appeals are dismissed.

(Hemant Gupta, ACJ)

Dinesh Kumar Singh, J I agree.

(Dinesh Kumar Singh, J)

P.K.P.

AFR/NAFR	A.F.R.
CAV DATE	10.01.2017
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