

**बिहार सरकार**  
**खाद्य एवं उपभोक्ता संरक्षण विभाग**

पत्रांक - प्र0 02-वि0 1-36/2010 5335 खाद्य,पटना/दिनांक-19/11/18  
प्रेषक,

पंकज कुमार,  
सरकार के सचिव ।

सेवा में,

सभी प्रमंडलीय आयुक्त,  
सभी जिला पदाधिकारी,  
बिहार।

विषय - बिहार राज्य खाद्य एवं आसैनिक आपूर्ति निगम एवं अन्य निगमों के समायोजन के संदर्भ में नियुक्त कर्मियों के पेंशन आदि के परिगणना हेतु समादेश याचिका 13495/2008, हरिशंकर प्रसाद बनाम राज्य सरकार एवं अन्य समूहवाद में दिनांक-01.11.2018 को पूर्ण पीठ द्वारा पारित ओदश के संबंध में ।

महाशय,

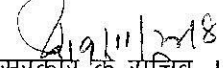
उपर्युक्त विषयक पटना उच्च न्यायालय द्वारा दिनांक-01.11.2018 को समादेश याचिका 13495/2008 हरिशंकर प्रसाद बनाम राज्य सरकार एवं अन्य समूहवाद में पूर्ण पीठ द्वारा इस मामले पर सुनवाई के उपरान्त निम्नांकित आदेश पारित किया गया है :-

“In view of the above and for the reasons stated above, It is held that the respective writ petitioners being the employees of the erstwhile Corporation shall not be entitled to pension/pensionary benefits/total gratuity counting their services rendered by them with the Corporation and that the State Government is justified in paying the pension/pensionary benefits to the concerned retired employees on pro-rata basis counting their services rendered by them with the State Government only. All the writ petitions stand dismissed, accordingly. “

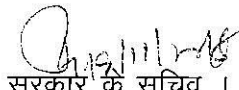
अतः इसकी प्रति संलग्न करते हुए अनुरोध है कि इसका अनुपालन सन्दर्भित मामलों में सुनिश्चित करायी जाय।

अनु0- यथोक्त ।

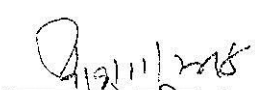
विश्वासभाजन

  
सरकार के सचिव ।

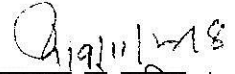
पत्रांक - प्र0 02-वि0 1-36/2010 5335 खाद्य,पटना/दिनांक-19/11/18  
प्रतिलिपि - महालेखाकार (ले0 एवं ह0), बिहार, पटना को सूचनार्थ एवं अवश्यक कार्रवाई हेतु प्रेषित।

  
सरकार के सचिव ।

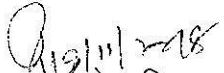
पत्रांक - प्र0 02-वि0 1-36/2010 5335 खाद्य,पटना/दिनांक-19/11/18  
प्रतिलिपि - निबंधक, राज्य उपभोक्ता फोरम/अध्यक्ष,सभी जिला उपभोक्ता फोरम को सूचनार्थ एवं अवश्यक कार्रवाई हेतु प्रेषित।

  
सरकार के सचिव ।

पत्रांक - प्र० ०२-वि० १-३६/२०१० ५३३५ खाद्य,पटना/दिनांक- १९/११/१९  
प्रतिलिपि - प्रधान सचिव, वित्त विभाग, बिहार को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

  
सरकार के सचिव ।

पत्रांक - प्र० ०२-वि० १-३६/२०१० ५३३५ खाद्य,पटना/दिनांक- १९/११/१९  
प्रतिलिपि - प्रबंध निदेशक, बिहार राज्य खाद्य एवं असेैनिक आपूर्ति निगम को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

  
सरकार के सचिव ।

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.13495 of 2008**

=====

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

... .. Petitioner/s

Versus

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

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 9006 of 2016**

=====

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

... .. Petitioner/s

Versus

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

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 2114 of 2010**

=====

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

... .. Petitioner/S

Versus



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

... Respondent/s

with

**Civil Writ Jurisdiction Case No. 2454 of 2010**

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

... Petitioner/s

Versus

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

... Respondent/s

with

**Civil Writ Jurisdiction Case No. 15106 of 2016**

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

... Petitioner/s

Versus

1. The State of Bihar.

COPY

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

... .. Respondent/s

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with

**Civil Writ Jurisdiction Case No. 15152 of 2016**

=====

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

... .. Petitioner/s

Versus

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

... .. Respondent/s

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with

**Civil Writ Jurisdiction Case No. 15043 of 2016**

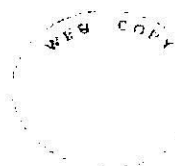
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Randhir Singh, son of Late Rajeshwar Prasad Singh, resident of Village- Parsa, Police Station- Rajnagar, Post Office- Rampatti, District- Madhubani- 847236 (Bihar).

... .. Petitioner/s

Versus

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



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

... Respondent/s

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with

**Civil Writ Jurisdiction Case No. 13408 of 2010**

=====

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

... Petitioner/s

Versus

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

... Respondent/s

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with

**Civil Writ Jurisdiction Case No. 13490 of 2010**

=====

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

... Petitioner/s

Versus



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

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 19189 of 2017**

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

... .. Petitioner/s

Versus

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

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 19262 of 2017**

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

... .. Petitioner/s

Versus

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



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

... Respondent/s

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**Appearance :**

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

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

: Mr. M.C. Gandhi, Adv.

: Mr. Navin Kumar, Adv.

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

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

: Mr. Shailendra Kumar, Adv.

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

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

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

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

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

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

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

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

: Mr. Shailendra Kumar Singh, Adv.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For the BSFC : Mr. Shailendra Kumar, Adv.

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

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

: Mr. Bindhyachal Singh, Adv.

: Mr. Parijat Saurav, Adv.

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

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

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

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

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

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

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

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

For the BSFC : Mr. Shailendra Kumar, Adv.

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

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

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



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

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

**Date : 01-11-2018**

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

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



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

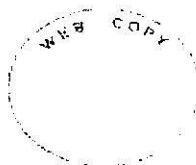
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2. The short question, which is posed for consideration of this Court and referred to the Full Court, is with respect to the services rendered by the concerned employees with the Corporation prior to their absorption in the State Government for the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

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

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

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



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

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

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

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

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

W E R C O P Y

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

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

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

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

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

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



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

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

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



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

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

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



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

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

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

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

First- The service must be under Government,

Second- The employment must be substantive and permanent.'

Third- the service must be paid by Government.

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

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

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



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

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

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

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

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



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

(Mukesh R. Shah, CJ)

(Dr. Ravi Ranjan, J)

(Ashutosh Kumar, J)

Brajesh/-

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पत्रांक-3ए-1-मुक०-111/2017-796/वि०

बिहार सरकार

वित्त विभाग

संकल्प

पटना, दिनांक:- 02/02/2018

विषय:- बोर्ड/निगम/सोसाइटी के कर्मियों को राज्य सरकार के रिक्त पदों के विरुद्ध समायोजित करने के निमित्त समरूप सेवा शर्त निरूपित करने के संबंध में।

बोर्ड/निगम/सोसाइटी के विघटित या यथा निर्णय की स्थिति में उक्त के कर्मियों को राज्य सरकार के रिक्त पदों के विरुद्ध विभिन्न विभागों द्वारा अलग-अलग सेवा शर्तों के अधीन समायोजित किया जाता रहा है।

2. सी०डब्ल्यू०जे०सी० सं०-16075/2011, अशोक कुमार बनाम राज्य सरकार एवं अन्य में दिनांक-02/07/2013 को पारित न्यायादेश द्वारा सामान्य प्रशासन विभाग को, बोर्ड/निगम/सोसाइटी के कर्मियों को राज्य सरकार के रिक्त पदों के विरुद्ध समायोजित करने के निमित्त, समरूप सेवा शर्त निरूपित करने का निर्देश दिया गया, जिसका कार्यकारी अंश निम्नवत् है:-

"However, the Court would like to observe that a large number of cases are coming to this Court in respect of employees who were earlier in the Government Corporation and by different decisions taken at different times by the government upon the Corporation became sick were taken into State Government service. Sometime the government took a decision to grant continuity of service. Sometime it took decision to give pay protection. Sometime they were treated as fresh appointees. Thus, denying them of any pensionary benefit. It is high time that the government should take a uniform decision in the matter so that all employees who were similarly situated and brought to government service are treated similarly so that no person or group has grievance against them. They all should be treated in non discriminatory manner. It would be for the Principal Secretary of General Administration Department to consider and decide the policy but in the fact as of now the petitioner cannot be granted any relief. Let a copy of this order be sent to the learned Principal Secretary, General Administration Department, Govt. of Bihar, for necessary action. The writ petition is disposed of accordingly".

3. रिट आवेदक द्वारा सी०डब्ल्यू०जे०सी० सं०-16075/2011 में पारित आदेश के विरुद्ध एल०पी०ए० सं०-1198/2013 दायर किया गया। उक्त एल०पी०ए० में दिनांक-21/08/2017 को निम्नांकित आदेश पारित किया गया:-

"Let a detailed affidavit be filed by the Principal Secretary, General Administration



Department, as to what follow up action he has taken since passing of the order dated 02.07.2013 in C.W.J.C. No.16075 of 2011. Since the said direction of the learned single Judge has significance not only limited to this case but for many other cases which may come or which are pending consideration before this Court his affidavit is of paramount importance.

Let the matter be listed after three weeks as prayed on behalf of the State Counsel."

4. पुनः एल०पी०ए० सं०-1198/2013 में दि०-03/10/2017 को न्यायालय द्वारा पारित आदेश का कार्यकारी अंश निम्नवत् है:-

"Since enough time has already been lost by inaction, if not inefficiency on the part of the General Administration Department or the State of Bihar, which also shows disregard to the judicial order, the Court at the most adjourns this matter to 19<sup>th</sup> of December, 2017, when affidavit of the Principal Secretary, Finance, Government of Bihar, Patna would be filed as to the steps taken in furtherance to the direction of the Court.

List this matter accordingly".

5. इस प्रकार बोर्ड/निगम/सोसाईटी के कर्मियों को राज्य सरकार के रिक्त पदों के विरुद्ध समायोजित करने के निमित्त समरूप सेवा शर्त निर्धारण का मामला सरकार के समक्ष विचारधीन था। अतएव, सम्यक् विचारोपरान्त बोर्ड/निगम/सोसाईटी के कर्मियों की राज्य सरकार के रिक्त पदों के विरुद्ध समायोजन हेतु सेवा-शर्त निम्नवत् निर्धारित किया जाता है:-

(क) निगम/सोसाईटी के कर्मियों के सम्बन्ध में:-

- (i) आदेश निर्गत की तिथि से समायोजन प्रभावी होगा। ऐसे सामंजित कर्मी समायोजन की तिथि से सरकारी सेवक माने जाएंगे एवं उसी तिथि से ही सरकारी सेवकों के लिए अनुमान्य सुविधाएँ देय होगी।
- (ii) ऐसे समायोजन के मामलों में नियुक्ति की अधिकतम उम्र सीमा शिथिल समझा जाएगा।
- (iii) निगम/सोसाईटी की कार्यावधि में किसी प्रकार की देनदारी/वकाया के भुगतान के लिए राज्य सरकार उत्तरदायी नहीं होगी।
- (iv) समायोजन के क्रम में आरक्षण नियमों का पालन किया जाना अनिवार्य होगा।
- (v) समायोजित कर्मी को निगम/सोसाईटी में प्राप्त हो रहे वेतन, समायोजित पद के वेतनमान में, संरक्षणीय होगा। अर्थात् पैतृक निगम/सोसाईटी में धारित पद हेतु प्रभावी वेतनमान संरक्षणीय नहीं होगा, बल्कि कुल प्राप्त वेतन ही संरक्षणीय होगा।
- (vi) पेशन प्रयोजनार्थ निगम/सोसाईटी की सेवावधि गणनीय नहीं होगी। निगम/सोसाईटी के



- समायोजित कर्मी राज्य सरकार की नई पेंशन योजना-2005 से आच्छादित होंगे।
- (vii) निगम/सोसाईटी में लागू कर्मचारी भविष्य निधि योजना के अधीन संबंधित कर्मी द्वारा निगम की सेवावधि में किये गये अंशदान एवं निगम/सोसाईटी द्वारा दिया गया अंशदान की कुल राशि सूद सहित भुगतान की जिम्मेवारी संबंधित निगम/सोसाईटी की होगी।
- (viii) समायोजित कर्मियों की वरीयता, सामान्य प्रशासन विभाग द्वारा वरीयता निर्धारण संबंधी संकल्पों/परिपत्रों के, अनुरूप किया जाएगा।
- (ix) समायोजन के पश्चात् उनकी प्रोन्नति, समायोजित पद के संवर्गीय नियमावली में विहित प्रावधानों के आलोक में होगी।
- (x) एम०ए०सी०पी० के प्रयोजनार्थ निगम/सोसाईटी के सेवावधि गणनीय नहीं होगी।

(ख) बोर्ड के कर्मियों के सम्बन्ध में:-

- (i) राज्य के अंतर्गत बोर्ड का गठन एवं उसका विघटन अधिनियम के तहत किया जाता है। विघटन के पश्चात् बोर्ड में कार्यरत कर्मियों का समायोजन, राज्य सरकार के विभागों/कार्यालयों में उनके द्वारा बोर्ड में धारित पद के वेतनमान/समकक्ष वेतनमान में, होगा। समायोजन की तिथि से वे सरकारी सेवक माने जाएंगे तथा ऐसे कर्मियों को सरकारी सेवकों के लिए अनुमान्य सुविधाएँ समायोजन की तिथि से देय होगी।
- (ii) ऐसे समायोजन के मामलों में कर्मी के नियुक्ति की अधिकतम उम्र सीमा शिथिल समझा जाएगा।
- (iii) बोर्ड में कार्यरत अवधि के लिए किसी प्रकार के बकाए के भुगतान के लिए राज्य सरकार उत्तरदायी नहीं होगा।
- (iv) बोर्ड के कर्मी के समायोजन के क्रम में आरक्षण नियमों का पालन किया जाएगा।
- (v) बोर्ड में प्राप्त हो रहे वेतन, समायोजित पद के वेतनमान में, संरक्षणीय होगा।
- (vi) बोर्ड में की गयी सेवावधि पेंशन/वित्तीय उन्नयन के प्रयोजनार्थ गणनीय होगी।
- (vii) बोर्ड में G.P.F. योजना से आच्छादित रहने की स्थिति में समायोजन के पश्चात् G.P.F. योजना से ही आच्छादित होंगे। बोर्ड की कार्यावधि में, G.P.F. में संचित राशि सूद सहित, बोर्ड द्वारा भुगतान किया जाएगा।
- (viii) बोर्ड में E.P.F योजना से आच्छादित रहने की स्थिति में समायोजन के पश्चात् ऐसे कर्मी नयी पेंशन योजना से आच्छादित होंगे।
- (ix) E.P.F योजना के अन्तर्गत समायोजन के पूर्व जो देनदारी होगी उसका भुगतान सूद सहित बोर्ड द्वारा किया जाएगा।
- (x) बोर्ड में बिहार पेंशन नियमावली लागू रहने की स्थिति में समायोजन के पश्चात् समायोजित कर्मी उसी नियमावली से शासित होंगे।
- (xi) समायोजन के पश्चात् प्रोन्नति, समायोजित पद के संवर्गीय नियमावली में विहित



प्रावधानों के आलोक में, शासित होगी।

(xii) समायोजित कर्मियों की वरीयता, सामान्य प्रशासन विभाग के संकल्पों/परिपत्रों से शासित होगी।

(xiii) समायोजित कर्मियों को MACPS-2010 के तहत, बोर्ड की नियमित सेवावधि गणनीय होगी।

6. यह सेवा-शर्त निर्गत की तिथि से प्रभावी होगा।

बिहार राज्यपाल के आदेश से  
ह0/-

(राहुल सिंह)  
सचिव (व्यय), वित्त विभाग।

ज्ञापांक-3ए-1-मुक०-111/2017 -796/वि०

पटना, दिनांक-02/02/2018

प्रतिलिपि- महालेखाकार (ले० एवं हक०) का कार्यालय, वीरचंद पटेल पथ, पटना, बिहार को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

ह0/-

(राहुल सिंह)  
सचिव (व्यय), वित्त विभाग।

ज्ञापांक-3ए-1-मुक०-111/2017 -796/वि०

पटना, दिनांक-02/02/2018

प्रतिलिपि- महानिबंधक, उच्च न्यायालय, पटना / सचिव, बिहार विधान सभा / सचिव, बिहार विधान परिषद्, बिहार को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

ह0/-

(राहुल सिंह)  
सचिव (व्यय), वित्त विभाग।

ज्ञापांक-3ए-1-मुक०-111/2017 -796/वि०

पटना, दिनांक-02/02/2018

प्रतिलिपि- सभी प्रधान सचिव/सभी सचिव/ सभी प्रमंडलीय आयुक्त/सभी जिला पदाधिकारी/अवर सचिव, माननीय लोकसुक्त कार्यालय, बिहार, पटना / सभी कोषागार पदाधिकारी / सभी जिला लेखा पदाधिकारी / प्रभारी पदाधिकारी, वित्त (वै०दा०नि०को०) विभाग /अवर सचिव, वेतन निर्धारण प्रशाखा / मिस्ट्रिस एनालिस्ट (वित्त विभाग के वेबसाइट पर अपलोड हेतु) / प्रभारी ई-गजट शाखा, वित्त विभाग, बिहार, पटना को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

(राहुल सिंह)

सचिव (व्यय), वित्त विभाग।

