

**Binay Kumar Choudhary Vs. Human Resource Development**

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**SooperKanoon Citation :** [sooperkanoon.com/110253](http://sooperkanoon.com/110253)

**Court :** Jharkhand

**Decided On :** Jun-16-2017

**Appellant :** Binay Kumar Choudhary

**Respondent :** Human Resource Development

**Advocate for Def. :** Mr. Akhilesh Kumar Pandey

**Advocate for Pet/Ap. :** Mr. P.P.Rao

**Judgement :**

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 4110 of 2013  
--- Bholanath Hansda @ Bhola Hansda --- ----- Petitioner Versus 1. The State of  
Jharkhand 2. The Secretary, Human Resources Development Department 3. The  
Director, Primary, Secondary and Mass Education, State of Jharkhand 4. The  
Secretary, Ministry of Food, Civil Supply and Consumer Affairs 5. The Accountant  
General, Jharkhand --- --- Respondents with W.P. (S) No. 2458 of 2008 1. Pano  
Devi 2. Ram Nagena Bhagal 3. Lachhani Devi 4. Sharda Devi 5. Anjani Kumari 6.  
Munita Kumari 7. Guriya Kumari --- ----- Petitioners Versus 1. The State of  
Jharkhand, through its Secretary, Education Department, Government of  
Jharkhand, Ranchi 2. Secretary, Food Material, Public Distribution & Consumer  
Forum Department, Govt. of Jharkhand.

3. Accountant General, Jharkhand, Ranchi 4. Director, Public Education  
Department, Jharkhand 5. Sub Divisional Education Officer, Giridih --- ---

Respondents with W.P. (S) No. 2905 of 2008 --- Sadhu Charan Ganjhu --- ----  
Petitioner Versus 1. The State of Jharkhand 2. The Secretary, Food & Civil  
Supplies Department, Government of Jharkhand 3. The Secretary, Human  
Resources Development Department, Government of Jharkhand 4. The Deputy  
Secretary, Food & Civil Supplies Department, Govt. of Jharkhand 5. The State of  
Bihar 6. The Secretary, Human Resources Department, Government of Bihar,  
Patna 7. The Accountant General, Jharkhand, Ranchi --- --- Respondents with  
W.P. (S) No. 6065 of 2008 --- 1. Sumintra Devi 2. Sandeep Kumar Sharma --- ----  
Petitioners Versus 1.The State of Jharkhand, through its Secretary, Human  
Resources Development Department, Government of Jharkhand, Ranchi 2.  
Accountant General, Government of Jharkhand 3. Director, Primary Education,  
Human Resources Development Department, Government of Jharkhand 4. Sub  
Divisional Education Officer, Sadar, Hazaribagh--- --- Respondents with W.P. (S)  
No. 1101 of 2009 2 Panna Lal Yadav --- ---- Petitioner Versus 1. The State of  
Jharkhand.

2. The Secretary, Human Resources Development Department, Govt. of  
Jharkhand 3. The Secretary, Finance & Commercial Taxes Department, Govt. of  
Jharkhand 4. The Director, Primary Education Department of Human Resources  
Development Department, Government of Jharkhand, Ranchi.

5. The District Education Officer, Hazaribagh --- --- Respondents with W.P. (S) No.  
3660 of 2009 --- Yugal Kishore Prasad --- ---- Petitioner Versus 1. The State of  
Jharkhand, through its Secretary, Human Resources Development Department,  
Government of Jharkhand, Ranchi.

2. Secretary, Commercial Taxes Department, Government of Jharkhand 3.  
Director, Primary & Mass Education, Government of Jharkhand 4. District  
Education Officer, Giridih. --- --- Respondents with W.P. (S) No. 3971 of 2009  
Surendra Prasad --- ---- Petitioner Versus 1. The State of Jharkhand, through its  
Secretary, Human Resources Development Department, Government of  
Jharkhand 2. Secretary, Department of Food, Public Distribution and Consumer  
Affairs, Government of Jharkhand 3. Director, Primary & Mass Education,  
Government of Jharkhand, Ranchi.

4. District Education Officer, Garhwa --- --- Respondents with W.P. (S) No. 4702 of 2009 Adhik Kumar --- --- Petitioner Versus 1. The State of Jharkhand.

2. The Secretary, Human Resource Development, Government of Jharkhand.

3. The Secretary-cum-Commissioner, Commercial Taxes Department, Government of Jharkhand 4. The Under Secretary, Commercial Taxes Department, Government of Jharkhand --- --- Respondents with W.P. (S) No. 469 of 2010 Badri Narayan Bhagat --- --- Petitioner Versus 1. The State of Jharkhand, through its Secretary, Human Resources Development Department, Government of Jharkhand 2. Director, Adult Education, Human Resource Development Department, Government of Jharkhand, Ranchi.

3. District Public Education Officer-cum-Sub Divisional Education Officer, Dumka.

4. The Accountant General, Jharkhand, Ranchi --- --- Respondents with W.P. (S) No. 693 of 2010 Prabhu Narayan Pandey --- --- Petitioner Versus 1. The State of Jharkhand, through its Secretary, Human Resources 3 Development Department, Government of Jharkhand, Ranchi 2. Secretary, Commercial Taxes Department, Government of Jharkhand 3. Commercial Taxes Additional Commissioner, Jharkhand, Ranchi.

4. Commercial Taxes Joint Commissioner (Administration), Hazaribagh Division, Hazaribagh.

5. Director, Primary & Mass Education, Government of Jharkhand, Ranchi 6. District Education Officers, Hazaribagh --- --- Respondents with W.P. (S) No. 1560 of 2010 Vina Singh --- --- Petitioner Versus 1. The State of Jharkhand.

2. Secretary, Human Resource Development Department, Govt of Jharkhand 3. Secretary-cum-Commissioner, Commercial Taxes Department, Govt. of Jharkhand 4. Director, Primary & Mass Education, Govt of Jharkhand --- Respondents with W.P. (S) No. 2671 of 2010 Sumitra Devi --- --- Petitioner Versus 1. The State of Jharkhand.

2. The Secretary, Human Resource Development Department, Govt of Jharkhand  
3. The Director, Primary Education, Department of Human Resources Development, Govt of Jharkhand  
4. The Sub Divisional Education Officer, Dhanbad. --- --- Respondents with W.P. (S) No. 2882 of 2010 Gurupad Singh Munda --- --- Petitione Versus 1. The State of Jharkhand through its Secretary, Human Resources Development Department, Govt, of Jharkhand.

2. Secretary, Essential Commodities, Public Distribution & Consumer Matters, Govt of Jharkhand  
3. The Accountant General, Jharkhand  
4. Director, Primary & Mass Education, Govt of Jharkhand  
5. District Education Officer, Pakur --- --- Respondents with W.P. (S) No. 3410 of 2010 Sitaram Dutta --- --- Petitioner Versus 1. The State of Jharkhand, through its Secretary, Human Resources Development Department, Govt of Jharkhand  
2. Secretary, Society welfare & Women & Child Development Department, Govt of Jharkhand.

3. Director, Adult Education, Human Resources Development Department, Govt of Jharkhand  
4. District Superintendent of Education-cum-Divisional Education officer, Giridih.

5. The Accountant General, Jharkhand --- --- Respondents with W.P. (S) No. 3513 of 2010 Subala Devi --- --- Petitioner Versus

1. The State of Jharkhand.  
2. The Director, Primary, Secondary and Mass Education, Human Resources Development Department, Jharkhand

3. The Secretary, Primary Mass Secondary Education, Human Resources Development Department, Jharkhand

4. The Accountant General, State of Jharkhand

5. The Secretary, Joint Commissioner of Commercial Taxes of Finance Office, Ranchi --- --- Respondents with W.P. (S) No. 4129 of 2010 Chaitan Tanti --- --- Petitioner Versus

1. The State of Jharkhand, through its Secretary, Human Resources Development Department, Govt. of Jharkhand

2. Director, Secondary Education, Jharkhand

3. District Education Officer, West Singhbhum, Chaibasa

4. Principal Upgraded +2 Secondary School, Bandhgaon, West Singhbhum, Chaibasa --- --- Respondents with W.P. (S) No. 4277 of 2010 Dharambir Baitha --- --- Petitioner Versus

1. The State of Jharkhand through its Secretary, Human Resources Development Department, Govt of Jharkhand

2. Secretary, Public Food Distribution & Consumer Matters Department, Govt of Jharkhand

3. Director, Primary Education, Human Resource Development Department, Jharkhand

4. District Education Officer, Simdega. --- --- Respondents with W.P. (S) No. 4278 of 2010 Parmeshwar Nanda --- --- Petitioner Versus

1. The State of Jharkhand through its Secretary, Human Resources Development Department, Govt of Jharkhand

2. Secretary, Public Food Distribution & Consumer Forum, Govt of Jharkhand

3. Director, Secondary Education, Jharkhand

4. District Supply Officer, Gumla. --- --- Respondents with W.P. (S) No. 4279 of 2010 Amulya Hazam --- --- Petitioner Versus

1. The State of Jharkhand, through its Secretary, Human Resource Development Department, Government of Jharkhand

2. Secretary, Public Food Distribution & Consumer Forum, Govt. of Jharkhand

3. Director, Secondary Education, Jharkhand

4. Sub Divisional Officer, West Singhbhum, Chaibasa ---- Respondents with W.P. (S) No. 4400 of 2010 Kameshwar Prasad Sahu --- --- Petitioner Versus
  1. The State of Jharkhand, through its Secretary, Human Resource Development Department, Government of Jharkhand
  2. Director, Primary cum Mass Education Department, Govt. of Jharkhand
3. Accountant General , Jharkhand --- --- Respondents with W.P. (S) No. 4872 of 2010 Bhagwati Dhiwar --- --- Petitioner Versus 5
  1. The State of Jharkhand, through its Secretary, Human Resource Development Department, Government of Jharkhand
  2. Secretary, Commercial Taxes Department, Government of Jharkhand,
  3. Joint Commercial Taxes Commissioner (Administration), Jamshedpur Division, Jamshedpur --- --- Respondents with W.P. (S) No. 6412 of 2010
    1. Most. Kiran Kunwar @ Kiran Devi
    2. Md. Arif --- --- Petitioners Versus 1.The State of Jharkhand, through its Secretary, Primary Education, Human Resource Development Department, Government of Jharkhand 2.The Director, Primary Education, Human Resource Development Department, Government of Jharkhand, Secretariat, Ranchi.
  3. District Superintendent of Education, District- Palamau 4. The Accountant General, Doranda, Ranchi --- --- Respondents with W.P. (S) No. 6641 of 2010 Balmukund Singh --- --- Petitioner Versus 1. The State of Jharkhand, through its Secretary, Human Resource Development Department, Government of Jharkhand, Ranchi.
    2. The Director, Primary Education, Jharkhand, Ranchi.
  3. Sub Divisional Officer, District- Palamau 4. The Accountant General, Jharkhand, Ranchi --- --- Respondents with W.P. (S) No. 6696 of 2010 Savita Devi --- --- Petitioner Versus 1. The State of Jharkhand, through its Secretary, Human

Resource Development Department, Government of Jharkhand, Ranchi.

2. The Director, Primary Education, Jharkhand, Ranchi.

3. The Accountant General, Jharkhand, Ranchi --- --- Respondents with W.P. (S) No. 252 of 2011 Rajeshwar Mishra --- --- Petitioner Versus 1. The State of Jharkhand through its Secretary-cum Commissioner, Sales Tax Department, Project Building, Jharkhand, Ranchi 2. The Additional Commissioner, Department of Commercial Tax, Government of, Jharkhand, Ranchi.

3. The Secretary, Human Resource Department, Government of Jharkhand

4. The Director, Primary, Human Resource Department, Govt. of Jharkhand

5. Deputy Commissioner, Commercial Taxes, Deoghar Circle, Deoghar --- --- Respondents with W.P. (S) No. 3153 of 2011

1. Kamdeo Rai

2. Prem Chand Hemrom @ Hembrom

3. Bhola Nath Hazam --- ---- Petitioners Versus

1. The State of Jharkhand

2. The Secretary, Human Resources Development Department

3. The Principal Secretary, Department of Food, Public Distribution and Consumer, Govt. of Jharkhand 6

4. The Accountant General, Jharkhand --- --- Respondents with W.P. (S) No. 6835 of 2011 Smt. Fula Devi --- ---- Petitioner Versus

1. The State of Jharkhand through its Secretary, Human Resources Development Department, Govt. of Jharkhand

2. Director, Primary Education, Jharkhand

3. District Public Officer, Ranchi

4. Accountant General, Ranchi, Jharkhand --- --- Respondents with W.P. (S) No. 5618 of 2012 Shakti Narayan Thakur --- --- Petitioner Versus

1. The State of Jharkhand

2. The Secretary, Humane Resources Development Department, Jharkhand

3. The Principal Secretary, Department of Food, Public Distribution and Consumer, Government of Jharkhand

4. The Accountant General, Jharkhand, Ranchi --- --- Respondents with W.P. (S) No. 7232 of 2012 Mukta Mathur ---- ---- --- Petitioner Versus

1. The State of Jharkhand

2. The Secretary, H.R.D Dept., Ranchi

3. The Director, Primary, Secondary and Mass Education, State of Jharkhand

4. The Accountant General, Ranchi --- ---- ---- Respondents with W.P. (S) No. 292 of 2013 Md. Rahamatullah ---- ---- --- Petitioner Versus

1. The State of Jharkhand

2. The Secretary, Dept. of Finance, Govt. of Jharkhand, Ranchi

3. The Additional Finance Commissioner, Dept. of Finance, Govt. of Jharkhand

4. The Secretary, Dept. of H.R.D, Govt. of Jharkhand

5. The Secretary, Dept. of Primary, Secondary and Mass Education, Govt. of Jharkhand

6. The Director, Mass Education & Primary Education, Govt. of Jharkhand

7. The Deputy Commissioner, Dhanbad

8. The Special Rationing Officer, / Additional Collector (Supply) Dhanbad

9. The Treasury Officer, Dhanbad --- ---- ---- Respondents with W.P. (S) No. 484 of 2013

1. Niranjana Thakur

2. Ashok Kumar Mishra

3. Pankaj Kumar Yadav

4. Jagdishwar Kumar Singh

5. Anil Kumar

6. Hari Dutt Choubey ---- ---- --- Petitioners Versus

1. The State of Jharkhand

2. The Secretary, Primary, H.R.D Dept., Ranchi

3. The Director, Primary, Secondary and Mass Education, State of Jharkhand ---  
--- ---- Respondents 7 with W.P. (S) No. 578 of 2013 Sitaram ---- ---- --- Petitioner  
Versus

1. The State of Jharkhand through the Secretary, Ministry of H.R.D, Ranchi

2. Secretary, Secondary Education, H.R.D Dept., Govt. of Jharkhand

3. Director, Secondary Education, H.R.D. Dept., Jharkhand, Ranchi

4. Regional Deputy Director of Education, H.R.D. Dept., Ranchi

5. District Education Officer, Ranchi --- ---- ---- Respondents with W.P. (S) No.  
2113 of 2013 Ram Lakhan Sahu ---- ---- --- Petitioner Versus

1. The State of Jharkhand

2. The Secretary, Ministry of H.R.D, Govt. of Jharkhand, Ranchi

3. The Director, Primary, Secondary and Mass Education, Govt. of Jharkhand

4. The District Superintendent of Education, Gumla

5. The Accountant General, Ranchi, Jharkhand ----- Respondents with W.P. (S) No. 2378 of 2013 Smt. Smriti Kana Sarkar @ Smriti Kala Sarkar ----- Petitioner Versus

1. The State of Jharkhand

2. The Secretary, H.R.D Dept., Govt. of Jharkhand, Ranchi

3. The Director, Primary, Secondary and Mass Education, State of Jharkhand

4. The Secretary, Ministry of Social Welfare, Women and Child Development Dept., Govt. of Jharkhand, Ranchi

5. The Deputy Director, Welfare, Kolhan Division, Chaibasa

6. The Accountant General, Doranda, Ranchi ----- Respondents with W.P. (S) No. 2431 of 2013 Smt. Basanti Sarkar ----- Petitioner Versus

1. The State of Jharkhand

2. The Commissioner cum Secretary, Primary, Secondary and Mass Education, Dept., Dhurwa, Ranchi

3. The Director, Primary, Secondary and Mass Education, Ranchi

4. The Accountant General, Doranda, Ranchi----- Respondents with W.P. (S) No. 2804 of 2013 Binay Kumar Choudhary ----- Petitioner Versus

1. The State of Jharkhand

2. The Secretary, H.R.D Dept., Ranchi

3. The Director, Primary, Secondary and Mass Education, Jharkhand, Ranchi ----- Respondents with W.P. (S) No. 4170 of 2013 Bipin Kumar Jha ----- Petitioner Versus

1. The State of Jharkhand

2. The Secretary, H.R.D. Dept., Ranchi

3. The Director, Primary, Secondary and Mass Education, Jharkhand, Ranchi

4. The Accountant General, Jharkhand, Ranchi ----- Respondents with W.P. (S) No. 4330 of 2013 Chhotka Hembrom ----- Petitioner 8 Versus

1. The State of Jharkhand

2. The Secretary, H.R.D. Dept., Ranchi, Jharkhand

3. The Director, Primary, Secondary and Mass Education, State of Jharkhand

4. The Accountant General, Ranchi, Jharkhand ----- Respondents with W.P. (S) No. 4963 of 2013

1. Sanjay Prasad Keshri

2. Pankaj Prasad ----- Petitioners Versus

1. The State of Jharkhand

2. The Secretary, H.R.D. Dept., Ranchi, Jharkhand

3. The Director, Primary, Secondary and Public Education, State of Jharkhand

4. The Accountant General(A&E), Ranchi, Jharkhand ----- Respondents with W.P. (S) No. 5323 of 2013 ---

1. Md. Mozammil Hasan

2. Bhola Nath Shah --- ----- Petitioners Versus

1. The State of Jharkhand

2. The Secretary, Ministry of Finance, Govt. of Jharkhand

3. The Secretary, Human Resources Development Department, Govt. of Jharkhand

4. The Secretary, Ministry of Agriculture, Govt. of Jharkhand
5. The Deputy Commissioner, Dumka
6. The District Agriculture Officer, Dumka
7. The District Education Officer, Dumka
8. The District Treasury Officer, Dumka --- --- Respondents with W.P. (S) No. 5872 of 2013 Ambika Prasad ---- ---- --- Petitioner Versus

1. The State of Jharkhand
2. The Secretary, H.R.D Dept., Ranchi, Jharkhand
3. The Director, Primary, Secondary and Mass Education, State of Jharkhand
4. The Accountant General, Doranda, Ranchi, Jharkhand --- Respondents with W.P. (S) No. 6107 of 2013

1. Mahendra Nath Mahto
2. Diwakar Singh ---- ---- --- Petitioners Versus

1. The State of Jharkhand
2. The Secretary, Ministry of Finance, Govt. of Jharkhand
3. The Secretary, Human Resources Development Department, Govt. of Jharkhand
4. The Secretary, Ministry of Arts, Culture, Sports and Youth Affairs, Govt. of Jharkhand

5. The Deputy Commissioner, Dumka
6. The District Sports Officer, Dumka
7. The Assistant Director, Arts, Culture and Youth Affairs, Dumka

8. The District Treasurer Officer, Dumka ----- Respondents with W.P. (S) No. 6969 of 2013

1. Md. Mozammil Hassan

2. Md. Tejamul Ansari @ Tejamul Ansari

3. Sadhana Ojha 9

4. Rukmani Devi Keshri

5. Meena Sinha ----- Petitioners Versus

1. The State of Jharkhand through the Chief Secretary, Govt. of Jharkhand

2. The Secretary, Department of Personnel and Administrative Reforms, Govt. of Jharkhand

3. The Secretary, Finance Department, Govt. of Jharkhand

4. The Secretary, Human Resources Development Department, Govt. of Jharkhand

5. The Director, Primary, Mass and Secondary Education, State of Jharkhand

6. The Secretary, Ministry of Agriculture Department, Govt. of Jharkhand

7. The Director, Ministry of Agriculture Department, Govt. of Jharkhand --- ----- Respondents with W.P. (S) No. 141 of 2014 Raja Ram Mahto ----- Petitioner Versus

1. The State of Jharkhand

2. The Secretary, Human Resource Development Department, Govt. of Jharkhand

3. The Director, Primary, Secondary and Mass Education, State of Jharkhand

4. The Secretary, Ministry of Food and Civil Supply and Consumer Affairs

5. The Accountant General, Jharkhand ----- Respondents with W.P. (S) No. 2317 of 2014 Umesh Jha ----- Petitioner Versus

1. The State of Jharkhand

2. The Secretary, Ministry of Human Resources Development, Govt. of Jharkhand

3. The Director, Primary, Secondary and Mass Education, State of Jharkhand

4. The Secretary-cum-Commissioner, Commercial Tax Department, Govt. of Jharkhand

5. The Deputy Commissioner, Commercial Taxes, Jharia Circle, Dhanbad

6. The Accountant General, Jharkhand ----- Respondents with W.P. (S) No. 2381 of 2014 Sanatan Soren ----- Petitioner Versus

1. The State of Jharkhand

2. The Principal Secretary, Ministry of Home Affairs, Govt. of Jharkhand

3. The Secretary, Ministry of Human Resources Development, Govt. of Jharkhand

4. The Accountant General, Jharkhand ----- Respondents with W.P. (S) No. 2538 of 2014 Sangram Das ----- Petitioner Versus

1. The State of Jharkhand

2. The Secretary, Ministry of Human Resources Development, Govt. of Jharkhand

3. The Director, Primary, Secondary and Mass Education, State of Jharkhand

4. The District Education Officer, Palamau

5. The Principal in Charge, Upgraded +2 Kalyan High School, Pandu, Palamau

6. The Accountant General, Jharkhand ----- Respondents with W.P. (S) No. 3277 of 2014 10

1. Surendra Prasad Rawani
2. Panchanand Dwivedi
3. Bilayati Prasad Singh
4. Sanatan Soren ----- Petitioners Versus

1. The State of Jharkhand
2. The Secretary, Ministry of Finance, Govt. of Jharkhand
3. The Secretary, Human Resources Development Department, Govt. of Jharkhand
4. The Deputy Commissioner, Dumka
5. The District Education Officer, Dumka
6. The District Treasurer Officer, Dumka----- Respondents with W.P. (S) No. 4501 of 2014

1. Anil Kumar Jha
2. Dharendra Prasad @ Birendra Prasad
3. Lala Uma Shankar Dayal
4. Bindo Mandal
5. Krishan Kumar Karn
6. Deo Shankar Jha
7. Kshitish Ram ----- Petitioners Versus

1. The State of Jharkhand
2. The Secretary, Human Resource Development Department, Govt. of Jharkhand

3. The Director, Primary, Secondary and Mass Education, State of Jharkhand ---  
---- Respondents with W.P. (S) No. 4838 of 2014 Rukmini Devi ---- ---  
Petitioner Versus

1. The State of Jharkhand

2. The Secretary, Primary, Human Resources Development Department

3. The Director, Primary, Secondary and Mass Education, State of Jharkhand

4. The Accountant General, Jharkhand ---- --- Respondents with W.P. (S) No.  
5106 of 2014 Murari Prasad ---- --- Petitioner Versus 1.The State of Jharkhand  
through its Secretary, Human Resources Development Department, Govt. of  
Jharkhand

2. Secretary, Commercial Taxes Department, Govt. of Jharkhand

3. Director, Primary and Mass Education, Human Resources Development  
Department, Govt. of Jharkhand

4. Deputy Commissioner, East Singhbhum, Jamshedpur

5. Accountant General, Jharkhand --- ---- --- Respondents with W.P. (S) No. 5207  
of 2014 Pradhan Mahto ---- --- Petitioner Versus

1. The State of Jharkhand

2. The Secretary, Ministry of Human Resources Development, Govt. of Jharkhand

3. The Director, Primary, Secondary and Mass Education, State of Jharkhand

4. The Secretary cum Commissioner, Commercial Tax Department, Govt of  
Jharkhand

5. The Joint Commissioner (Appeal), Commercial Taxes Department, 11  
Jamshedpur Division, Jamshedpur

6. The Accountant General, Jharkhand ----- Respondents with W.P. (S) No. 5771 of 2014 Basudeo Chourasia ----- Petitioner Versus

1. The State of Jharkhand

2. The Secretary, Human Resources

3. The Director (Primary Education), Govt. of Jharkhand

4. The Commissioner, Food and Supply Department, Govt. of Jharkhand

5. District Supply Officer, Chatra

6. Accountant General, Jharkhand --- ----- Respondents with W.P. (S) No. 676 of 2015

1. Surun Soren

2. Sunil Kumar Sinha ----- Petitioners Versus

1. The State of Jharkhand

2. The Secretary, Department of Human Resources and Development, Govt of Jharkhand

3. The Director, Mass Education and Primary Education, Govt. of Jharkhand

4. The Deputy Commissioner, Chatra

5. The District Supply Officer, Chatra ----- Respondents with W.P. (S) No. 981 of 2015 Santosh Kumar Sinha ----- Petitioner Versus

1. The State of Jharkhand

2. The Secretary, Department of Human Resource Development, Govt. of Jharkhand

3. The Secretary, Food, Public Distribution and Consumer Affairs, Govt. of Jharkhand

4. The Director, Primary and Mass Education, Govt. of Jharkhand

5. The Deputy Commissioner, Chatra

6. The District Supply Officer, Chatra 7 The Accountant General (A&E), Jharkhand

--- ---- Respondents with W.P. (S) No. 371 of 2016 Anil Kumar Upadhyay ---- ----

--- Petitioner Versus

1. The State of Jharkhand

2. The Secretary, Ministry of Finance, Govt. of Jharkhand

3. The Secretary, Human Resources Development Department, Govt. of Jharkhand

4. The Director, Secondary Education, Govt. of Jharkhand

5. The District Education Officer, Ramgarh

6. The District Treasurer Officer, Ramgarh ---- ---- Respondents with W.P. (S) No. 1865 of 2016 Ganpat Kumar Bhagat ---- ---- --- Petitioner Versus

1. The State of Jharkhand

2. The Secretary, Ministry of Finance, Govt. of Jharkhand

3. The Secretary, Ministry of Agriculture, Govt. of Jharkhand

4. The Director, Ministry of Agriculture, Govt. of Jharkhand

5. The Assistant Director, Provident Fund, Govt. of Jharkhand 6.The Sub Divisional Agricultural Officer cum District 12 Agriculture Officer, Khunti

7. The District Treasurer Officer, Khunti ---- ---- Respondents with W.P. (S) No. 3333 of 2016 Shyam Singh ---- ---- --- Petitioner Versus

1. The State of Jharkhand

2. The Secretary, Ministry of Finance, Govt. of Jharkhand

3. The Secretary, School Education and Literacy Department, Govt of Jharkhand
4. The Director, Secondary Education, Govt. of Jharkhand
5. The District Education Officer, Hazaribagh
6. The District Treasury Officer, Hazaribagh ---- ---- Respondents with W.P. (S) No. 3400 of 2016 Shyam Sundar Prasad ---- ---- --- Petitioner Versus

1. The State of Jharkhand
2. The Secretary, Ministry of Finance, Govt. of Jharkhand
3. The Secretary, School Education and Literacy Department, Govt of Jharkhand
4. The Director, Secondary Education, Govt. of Jharkhand
5. The District Education Officer, Hazaribagh
6. The Sub Divisional Educational Officer, Hazaribagh

7. The District Treasury Officer, Hazaribagh ---- ---- Respondents CORAM: The Honble Mr. Justice H.C. Mishra The Honble Mr. Justice Aparesh Kumar Singh The Honble Mr. Justice Dr. S.N. Pathak ---- For the Petitioners: M/s. Kailash Prasad Deo, Arshad Hussain, Rita Kumari, Anil Kumar, Advocates For the Resp - State: M/s Jai Prakash, A.A.G., Rishi Pallav, JC to A.A.G. For the Resp - A.G.: Mr. Sudarshan Shrivastava, Advocate --- Reserved on:

02. 05/2017 Pronounced on:

16. 06/2017 --- Aparesh Kumar Singh, J: Heard learned counsel for the parties.

2. The matter stood referred to this Larger Bench on account of divergence in opinion in the decisions rendered by the learned Division Bench of this Court. Earlier by order dated 25.6.2015, learned Single Judge (one of us Aparesh Kumar Singh, J.) taking note of the divergence in opinion in the judgments rendered by learned Division Bench of this Court in L.P.A. No. 515 of 2014, 359 of 2009, 435 of 2010 relied upon by the petitioners and in L.P.A. No. 188 of 2004 relied upon by

the Respondent-State referred the matter to the learned Division Bench for consideration, i.e. whether the matter requires reconsideration by the larger Bench or not. Since the order dated 25.6.2015 sums up the common grievances of these petitioners, it is appropriate to reproduce it hereunder:- In these batch of writ petitions the common grievance of the petitioners can be summed up as follows:- Petitioners herein, who were working under the Adult cum Non Formal Education Project in the erstwhile State of Bihar, were rendered surplus on closure of that project / scheme on 16.5.2001. Some of these petitioners or 13 the original employees attained the age of superannuation thereafter, some of them died and some of them who had not reached the age of superannuation were absorbed by the Government of Jharkhand in different departments sometime in the year 2007 vide resolution dated 30.5.2007 issued by the Human Resources Development Department. In the notification of their absorption, there was a condition at clause 11 and 12 that the absorption of the surplus employees will be treated as fresh appointment and they will not get the benefit of seniority on the basis of their past service and also pay protection. Incidentally, it is to be noted here in that petitioners herein were also claiming salary for the period after closure of the scheme in May 2001 till they were absorbed. That issue is no longer res-integra as the very question relating to the payment of arrears of salary in respect of such persons has now been settled by the judgment rendered by the Hon'ble Supreme Court in the case of State of Jharkhand & others Vrs. Asgar Ali & others passed in Special Leave to Appeal (C) CC No.10361-10364 of 2014 dated 18.7.2014. The State-Respondents are making payment of salary in phase in terms of the direction passed by the Hon'ble Supreme Court as stated on behalf of learned additional A.G appearing on behalf of the State. The controversy which has remained thereafter is in relation to the pensionary benefits of those surplus employees, whether those have either reached the age of superannuation or have died or those absorbed in the year 2007 by the aforesaid notification. The claim of the petitioners have been resisted by the respondent- State by filing a detailed counter affidavit in some of the cases such as in W.P.S. No. 4110 of 2013. Learned A.A.G appearing on behalf of the respondent submits that petitioners have relied upon judgments passed in the cases of (i) Bhuvneshwar Mahto Vrs. State of Jharkhand & others passed in W.P.S. No. 4751 of 2003 dated 21.11.2003 (ii) Ila Sinha Vrs.

State of Jharkhand & others in W.P.S. No.574 of 2008 dated 28.11.2008 (iii) Zahid Hussain & others Vrs. State of Jharkhand & others in W.P.S. No. 2774 of 2004 dated 26.3.2010. Learned Division Bench of this Court refused to interfere in the L.P.A.s preferred by the respondent- State vide judgments passed in the individual cases aforesaid being L.P.A. No. 515 of 2004 dated 27.4.2005, L.P.A. No. 359 of 2009 dated 10.10.2009 and L.P.A No.435 of 2010 dated 28.3.2011 respectively. The State went in appeal before the Hon'ble Supreme Court against all these 3 cases but the S.L.P.s were also dismissed in-limine being S.L.P (Civil) CC No. 8793 of 2005 dated 30.9.2005, S.L.P.(Civil) No. 1377 of 2011 dated 2.8.2013 and S.L.P.(Civil) C.C.No. 19981 of 2011 dated 16.12.2011 respectively. However, it has been pointed out by learned A.A.G appearing on behalf of the State that in another Letters Patent Appeal being L.P.A. No. 188 of 2004 in the case of State of Jharkhand & others Vrs. Bimal Kumar Sinha, vide order dated 28.3.2008, learned Division Bench of this Court after taking into account the judgment rendered by the Apex Court in the case of Dhyani Singh Vrs. State of Haryana reported in 2002(10) SCC656 was pleased to set aside the judgment rendered by the learned Single Judge which held that past services of such persons will be taken into account. It is submitted that the judgment rendered in the case of Ila Sinha (supra) or Zahid Hussain & others (Supra) by the learned Division Bench has not taken note of the view rendered in the case of Bimal Kumar Sinha(Supra) on similar facts. It is further submitted that in the judgments relied upon by the learned counsel for the petitioners passed by the learned Single Judge, there is no discussion on the import of clause-11 and 12 of the absorption notification dated 30.5.2007. Learned counsel for the petitioners submits that the claim for pensionary / death cum retirement benefits cannot be denied by refusing to reckon their past services as spent under the Adult cum Non Formal Education Project. The aforesaid condition in the absorption notification at clause 11 and 12 therefore is contrary to the decision rendered in the aforesaid cases and petitioners are also entitled to derive advantage of pensionary benefits. Having taken note of the aforesaid contention of the parties, it appears that the matter requires hearing by the learned Division Bench of this Court as 14 there are divergent views expressed in one or the other case such as in L.P.A. No. 188 of 2004 in the case of State of Jharkhand & others Vrs. Bimal Kumar Sinha on the one hand and on the other hand in L.P.As

preferred in the case of Bhuvneshwar Mahto , Ila Sinha and Zahid Hussain & others. In that view of the matter, the instant matters are referred to the learned Division Bench for consideration and whether the matter requires reconsideration by a larger Bench or not.

3. Thereafter the matter was referred vide order dated 9.10.2015 by the learned Division Bench before Honble the Chief Justice for constitution of a larger Bench. For convenience sake relevant facts are taken from W.P.S. No. 4110 of 2013. However in course of introduction of facts other relevant facts and documents as have been annexed and relied upon in other analogous writ petitions shall also be referred to herein after as and when necessary.

4. Petitioners in these writ petitions (except few referred to in the subsequent paragraphs) were appointed under the Adult cum Non Formal Education Project in the erstwhile State of Bihar between the period 1978 to 1990. The project was co-sponsored by the Central Government and the State Government. Some of the petitioners were appointed as Adult Education Supervisor while others were appointed in the ministerial cadre such as Stenographer, Clerk cum Accountant, Clerk cum Typist, Peon as well as Drivers. These petitioners were working under the Mass Education/ Non Formal Education Programme at the time of bifurcation of the State and their services fell in the successor State of Jharkhand. The Government of India by the policy decision dated 1.4.2001 closed the Mass Education cum Non Formal Education Project. As a result, Government of Jharkhand declared such employees as surplus w.e.f. 15.5.2001. Many of such employees who were declared surplus stood absorbed by virtue of resolution dated 30.5.2007 bearing memo no. 824 issued by the Human Resources Development Department, Government of Jharkhand in various department such as Food, Public Distribution and Consumer Affairs Department, Finance Department, Social Welfare, Women and Child Development Department, Urban Development Department etc. on different posts in the prescribed scale of pay. Those who had reached the age of superannuation prior to the notification were not absorbed. As per clause 11 of the notification, the absorption of surplus employees would be treated as new appointment and services rendered prior to their declaration as surplus would not be counted for the purpose of their seniority.

They would also not be granted the benefit of pay protection. The notification dated 30.5.2007 shows that total of 756 such employees were declared surplus as on 16.5.2001; 330 belonging to the Supervisor Cadre while 423 belonging to the ministerial cadre; 158 persons in the cadre of Supervisor out of 172 were to be absorbed in the prescribed scale of Rs.5000-8000 in the Food, Public Distribution and Consumer Affairs Department, Finance Department and Commercial Taxes Department and also in the Social Welfare 15 Department as Female Supervisor/ Statistical cum Evaluation Supervisor. 358 surplus employees belonging to the cadre of Stenographer, Clerk cum Accountant and Clerk cum Typist were to be absorbed in the scale of Rs.4000 - 6000 in Departments enumerated thereunder. 17 persons in the cadre of jeep driver were also to be absorbed in the prescribed scale of pay in different Departments. Consequent notification of their absorption were also issued thereafter by various department such as the H.R.D department being letter no. 1137 dated 24.7.2007 (Annexure-8 to W.P.S. No. 4110 of 2013).

5. All these petitioners were appointed under the Adult Education Project launched in the year 1978 between 1978 to 1990 on different posts such as Adult Education Supervisor, Stenographer, Clerk cum Accountant, Clerk cum Typist, Jeep Driver and Peon except petitioner, Pano Devi w/o deceased employee Mahendra Ram in W.P.S. No. 2458 of 2008 who is stated to have been appointed on 8.12.1970 as Guard in District Mining Office, Hazaribagh and retired on 31.8.2007 as Supply Inspector from Food, Public Distribution and Consumer Affairs after his absorption on 24.7.2007. He died on 1.8.2014. Petitioner Yugal Kishore Prasad in W.P.S. No. 3660 of 2009 claims to have been appointed on the post of lower division clerk in the office of Commanding Officer, Muzaffarpur vide appointment letter dated 29.6.1966 issued by the Commanding Officer, 3-Bihar EME, NCC, Muzaffarpur and retired on 31.1.2008 as Clerk cum Typist after his absorption vide notification dated 18.2.2008. Petitioner Adhik Kumar in W.P.S. No. 4702 of 2009 claims to have been appointed through letter dated 5.12.1975 on the post of peon at the State Mobile Library, Hazaribagh and retired on 31.1.2009 after his absorption on 22.11.2007. He also was rendered surplus after closure of the scheme on 16.5.2001 as per the averments made in the writ petition. Petitioner Most. Rajkumari is W/o deceased employee, Late Kartik Kushwaha similarly who is

stated to have joined as Assistant Teacher on 22.10.1973 pursuant to his appointment by the District Superintendent of Education, Giridih vide memo no. 736 dated 30.9.1973. On the basis of the prayer made and relevant pleadings on record, petitioners in the batch of these 59 writ petitions can be broadly categorized as follows:- One group of petitioners have retired after being declared surplus w.e.f 16.5.2001 but before they were absorbed pursuant to the notification dated 30.5.2007. In this category some of the petitioners are legal heirs of those employees who died during this period before being absorbed. The second category of petitioners are those who after being declared surplus w.e.f 16.5.2001 were absorbed in Government service under notification dated 30.5.2007 and have retired thereafter. The third category of petitioners are those who were still working as on the date of filing of these writ petitions under the Government of Jharkhand after being absorbed under notification dated 30.5.2007. 16 Pensionary benefits have been claimed by the petitioners in the first two categories by counting their past services under Adult Education cum Non-formal Education Project. The third category of petitioners who are still working also prayed for counting of their past services under the Adult Education Scheme for the purpose of reckoning their seniority. They have also assailed the conditions at clause 11 & 12 of the notification dated 30.5.2007 whereunder, upon their absorption, they have been treated as fresh appointees and their past services are not being counted for the purpose of seniority or fixation of their initial salary. In effect, this category of petitioners also seek counting of their past service for the purpose of seniority and consequent post retirement benefits. So far as issue relating to arrears of salary for the period 16.5.2001 till the date of their absorption under notification dated 30.5.2007 in the Government of Jharkhand is concerned, this is no longer res integra as the Hon'ble Supreme Court in the case of Asgar Ali & others in Special Leave to Appeal (CC No. 10361-10364 of 2014) vide judgment dated 18.7.2014, has directed the State Government to release arrears of salary to these employees in phased manner within a period of 2 years. It would be pertinent to state that petitioner, Asgar Ali & others had approached this Court in W.P.S. No. 729 of 2004 only with a claim of arrears of salary for the period they were rendered surplus w.e.f. 16.5.2001 till the date of their absorption. No claim for counting of past service for the purpose of pensionary benefits were either

made or allowed by the learned Writ Court or the L.P.A Court or by the Hon'ble Supreme Court in their case. The issue to be answered by the larger Bench is whether the present petitioners are entitled to count their past services under the Adult Education / Non-formal Education scheme for the purpose of pensionary benefits. This issue covers all these 3 categories of petitioners enumerated above including those who have been absorbed in regular government service under the notification dated 30.5.2007 and are either working or retired. We have deliberately not referred to the individual claims of arrears of salary for different period as claimed by some of petitioners as that is not a question referred before this Bench. Those who stand covered under the directions of the Hon'ble Supreme Court dated 18.7.2014 in Asgar Ali & others (Supra) are to be guided by such decision for the purpose of grant of arrears of salary to them.

6. The description of the three broad categories of the petitioners are entailed by way of a chart containing the petitioners name; their date of appointment/ joining; the post on which they were appointed /joined and their date of retirement / death/ or are still working. Petitioners declared surplus w.e.f 16.5.2001 but retired / died before the notification dated 30.5.2007 of absorption S.No W.P.(S) Petitioner's legal heirs name Date of appointment/ joining Date of retirement / death 17 . No.

1. 6065/2008 1.Sumitra Devi widow of Appointed as a Peon, Non-formal He died in harness on late Ram Kripal Sharma Education Project, Markachho, 19.12.2005 before absorption 2. Sandeep Kumar Sharma Hazaribagh pm 24.3.1981 2 469/2010 Badri Narayan Bhagat Initially on December,1980 Petitioner superannuated from petitioner's was appointed as his service on 31.07.2004 as Mazdoor in the Department of Driver from District Public Adult Education Project, Education Officer, Dumka Kathikund, Santhal Parganas, before absorption Government of Bihar, Patna (now Jharkhand) and vide order dated 09.06.1981 passed by Director, Adult Education, Bihar,Patna he was regularized on the permanent post of Driver.

3. 2671/2010 Sumitra Devi, Widow of Petitioner's Late Husband Petitioner's Late Husband died Late Lal Babu Singh appointed vide letter dated on 04.05.2004 06.05.1981, in the office of Adult Education Project at Aurangabad District as Jeep

Driver.

4. 4400/2010 Kameshwar Prasad Sahu Petitioner was initially appointed Petitioner superannuated from on the post of Adult Education his service on 31.08.2006 Supervisor at Basia-cum- Kaamdara, Ghumla by the office order no. 1241 dated 29.04.1987 5 6412/2010 1. Most. Kiran Kunwar @ Petitioner was appointed on the Husband of the petitioner while Kiran Devi, W/o- Late Lala post of Adult Education serving on the post of Project Suresh Kunwar Supervisor on 30.12.1981, vide Officer at Barwadih, District- 2. Md. Arif, S/o- Late Lala order dated 06.05.1998 Palamu died in harness on Suresh Kunwar 28.11.2002.

6. 6696/2010 Savita Devi, Wife of Late- Vide order contained in Memo Petitioner's Late Husband died in Prafulla Ahir No. 2887 dated 28.12.1981 harness on 14.01.2004 at issued by the then Director of Piskatoli, evident from the death Adult Education, Bihar on the certificate. post of Adult Education Supervisor at Village-Piskatoli, Ghaghara, Sindri, Ranchi.

7. 6835/2011 Smt. Fula Devi, W/o - Late Petitioner was Appointed as a He died on 13.05.2006 as also Janeshwar Ram Clerk in the Education appear from death certificate Department, Government of dated 30.05.2006 . Bihar vide letter of Director, Adult & Non-formal Education in memo no. 952 dated 15.04.1985; thereafter posted on 10.05.1985 at the Adult Education Project Office, Nimdih (Singhbhum).

8. 2431/2013 Smt. Basanti Sarkar Appointed for the post of Retired on 10.05.2005 as a Supervisor on 26.03.1981 in Project Officer, under the Jagarnathpur, Chaibasa in Adult Ministry of HRD, Department of Education Program under Government of Jharkhand. Education Department.

9. 4330/2013 Chhotka Hembrom 15.4.1982 Retired on 31.1.2000 as Clerk from the office of Project Officer of Adult-cum-non formal Education, Pakurai-II, Dist-Pakur under the Ministry of HRD, Department of Government of Jharkhand.

10. 4963/2013 1. Sanjay Prasad Keshri Joined on 22.10.1973 to the post Employee died on 13.07.2004 at 2. Pankaj Prasad of Assistant Teacher, Girls

about 03.00 PM during treatment substituted in place of Middle School, Chandori, in RIIMS Hospital, Ranchi and original petitioner Most. Giridih Vide District original petitioner also died Rajkumri W/o Late Kartik Superintendent of Education's during pendency of the writ Kushwaha Memo No. 736 dated 30.09.1973 petition.

11. 4838/2014 Rukmini Devi, W/o Late Petitioner's husband was Petitioner retired on 12.07.2004 Nirmal Toppo appointed to the post of before absorption Supervisor vide letter no. 8889 dated 18.12.1981 in Adult Education, Patna. Her husband 18 joined on 15.01.1982. Petitioners declared surplus w.e.f 16.5.2001 who were absorbed in Government service under notification dated 30.5.2007 and have retired thereafter. S.N W.P.(S) Petitioner's/ legal heirs Date of appointment/ joining Date of retirement / death o. No. name 01. 4110/2013 Bholanath Hansda Petitioner appointed on Petitioner retired on 20.01.2008 19.04.1982 as a Supervisor vide Memo No. 1015 dated 05.04.1982. 02 2458 of Pano Devi w/o the deceased Date of appointment on Retired on 31.8.2007 as Supply 2008 employee Mahendra Ram 8.12.1970 as Guard in District Inspector from Food, Public Mining Officer, Hazaribagh Distribution and Consumer Affairs Dept. Died on 1.8.2014 03. 2905/2008 Sadhu Charan Ganjhu Appointed and joined on the post Superannuated with effect from of Temporary Supervisor by 31.01.2008 as 'waiting for Memo No. 219 dated 12.12.1978 posting' issued by the Directorate, Adult Education, Patna. 04. 1101/2009 Panna Lal Yadav Petitioner was appointed as Adult 31.08.2007 the date of Education Supervisor, retirement as Supervisor in the Bandhgaon vide office order no. office of Secretary, Finance & 562 dated 16.03.1981 issued by Commercial Taxes Department, the office of Director, Adult Ranchi. Education, Bihar, Patna. 05. 3660/2009 Yugal Kishore Prasad Appointed on the post of Lower Retired on 31.1.2008 as Clerk Division Clerk in the office of cum typist Commanding Officer, Muzaffarpur, vide appointment letter no. 5/4/A/618 dated 29.06.1966 issued by Commanding Officer, 3-Bihar EME, N.C.C, Muzaffarpur. 06. 3971/2009 Surendra Prasad Petitioner was initially appointed Petitioner's Date of retirement as a Supervisor under the Adult 30.9.2007 Education Directorate, Bihar, Patna vide memo no. 395 dated 08.03.1979. 07. 4702/2009 Adhik Kumar Vide letter dated 05.12.1975 Retired on 31.01.2009 issued by Superintendent of Library, and appointed on the post of Peon at State Mobile Library, Hazaribagh. 08. 693/2010 Prabhu Narayan Pandey Vide letter no.

26 dated Vide letter no. 445 dated 23.01.1981, petitioner was 31.07.2009, petitioner appointed on the post of Peon in superannuated from his service the office of Adult Education after attaining 60 years of age. Project Officer, Chatra, Hazaribagh. 09. 1560/2010 Vina Singh, Wife of Late Petitioner's Late Husband Died in harness on 10.10.2009 Birendra Singh Birendra Singh was appointed as after absorption Typist-Clerk at Adult Education project, Gandaiya (Giridih) vide letter no. 23 dated 13.07.1984 issued by District, Adult Education Officer, Giridih.

10. 2882/2010 Gurupad Singh Munda Vide letter no. 1441 dated Vide letter no. 214 dated 23.09.1980 issued by the 31.12.2008 issued by Divisional Director, Adult Education Bihar, officer, Pakur, petitioner retired Patna joined his services on from his services from the post 30.09.1980 at Ormanjhi Project of Supply Inspector from as Project Officer. Littipara Block, Dist- Pakur.

11. 3410/2010 Sitaram Dutta On 02.05.1981, petitioner was Petitioner retired on 31.05. 2007 appointed on the post of Adult to the post of Statistical-cum-Education Supervisor, evident Evaluator Supervisor at Giridih from order no. 1058 dated before absorption 02.05.1981. 19 12. 3513/2010 Subala Devi, Wife of Late Vide Memo No. 79, Patna, dated Petitioner's Late Husband retired Krishna Mohan Pandey 24th January, 1980 issued by the on 31.07.2009 on the post of Director, Adult Education, Bihar, Peon from the Joint Patna for the post of Peon at Commissioner (Appeal), Sirdala in Nawada District, Department of Commercial Tax, Bihar. Ranchi Division, Ranchi and her husband died on 10.01.2010.

13. 4129/2010 Chaitan Tanti Vide order contained in Memo Retire from his service on No. 243 dated 03.07.1985 passed 31.01.2010 by District Adult Education Project Program, Singhbhum, Chaibasa, the petitioner was appointed on the post of Peon in the Office of Adult Education Project, Kuchai.

14. 4277/2010 Dharambir Baitha Vide order no. 133 dated Retired from his service on 27.01.1979 passed by Director 30.06.2009 on Superannuation. (Adult Education), Bihar, the petitioner was appointed on the post of Adult Education Supervisor in Jamuwa Block, District- Giridih.

15. 4278/2010 Parmeshwar Nanda Vide letter no. 1194 dated Petitioner retired from his 19.08.1980 issued by the then service on 31.08.2009 Director, Adult Education, Bihar, Patna, and petitioner was selected for appointment on the post of Adult Education Supervisor.

16. 4279/2010 Amulya Hazam Vide letter no. 1194 dated Petitioner retired from his 19.08.1980 issued by the service on 31.07.2009 Director, Adult Education, Bihar, Patna, the petitioner was selected for appointment on the post of Adult Education Supervisor.

17. 4872/2010 Bhagwati Dhiwar Petitioner was appointed on Petitioner, superannuated from 11.08.1981 to the post of Peon in his service on 31.07.2010 the Office of Adult Education Project, Dumka.

18. 6641/2010 Balmukund Singh Vide order contained in Memo Petitioner, retired form +2 S.S. No. 701 dated 11.03.1986 issued High School, Ghaghara, District- by the then Director of Adult Gumla on 30.06.2009. Education, Bihar on the post of Adult Education Supervisor at Village- Barkatha, Hazaribagh.

19. 3153/2011 1. Kamdeo Rai, Pet. No.1 appointed on Pet. No. 1 and 3 retired on 2.Premchand Hembrom 23.8.1979. 30.6.2009 and Pet. No. 2 3.Bhola Nath Hazam Pet. No. 2 &3 appointed on 30.11.2008 25.4.1990 20. 5618/2012 Shakti Narayan Thakur Vide letter no. 545 dated Petitioner retired from his 30.04.1979 appointed as Adult service on 31.03.2011. Education Supervisor in Adult Education Department, Government of Bihar. And joined his service on 07.05.1979 at Village- Chandan Kiaryi, Dist- Hazaribagh.

21. 7232/2012 Mukta Mathur 13.4.1985 Retired on 31.8.2009 as Clerk in Upgraded +2 Adivasi High School, Sitaram Dera, East Singhbhum under the Ministry of HRD, Department of Government of Jharkhand.

22. 292/2013 Md. Rahamatullah Appointed vide letter no. 232 Retired on 31.1.2017 dated 24.01.1981 under the dept. 20 of Education, Govt. of Bihar and joined as Supervisor 23. 578/2013 Sitaram Vide order date 25.06.1979 Retired on 28.2.2016 issued by the Director, Adult Education, Bihar, the petitioner was

appointed for the post of Peon and posted in the Tamar at Ranchi.

24. 2113/2013 Ram Lakhan Sahu Petitioner was appointed to the Retired on 31.3.2008 as Clerk in post of Supervisor vide Memo Upgraded +2 High School, No. 289 Patna dated 28.12.1981 Dumri, Tangardih, Gumla under by Director of Adult Education- the Ministry of HRD, cum-Joint Secretary, Bihar, Department of Government of Patna. Jharkhand.

25. 4170/2013 Bipin Kumar Jha Appointed for the post of Retired on 31.03.2013 as a Supervisor between 1978 to 1987 Clerk-cum-Typist, from in Adult Education. Upgraded +2 D.P.M A-High School Nawagarh, Dhanbad, under the Ministry of HRD, Department of Government of Jharkhand.

26. 5872/2013 Ambika Prasad Appointed for the post of Clerk Retired on 01.08.2013 as Clerk- between 1978 to 1986 in Adult cum-Typist, from Upgraded +2 Education, Vide Memo No. High School Kurmichak, Godda, 2327/Patna dated 03.09.1985 under the Ministry of HRD, issued by Director, Adult-cum- Department ,Government of Non-formal Education, Bihar, Jharkhand. Patna.

27. 141/2014 Raja Ram Mahto Petitioner appointed to the post Petitioner retired on 30.06.2013, of Supervisor by memo no. Ministry of Food , Civil 1411/Patna dated 23.09.1980 Supply ;and Consumer Affairs issued by the office of Director, Department, Government of Adult Education, Bihar Jharkhand as Supply Inspector.

28. 2317/2014 Umesh Jha Petitioner was appointed on the Petitioner retired on 28.02.2014. post of Clerk-cum-Accountant in Ministry of Commercial Tax Adult Education, under Department , Government of Education Department, Jharkhand as a Clerk after Government of Bihar in the absorption office of Phirtand, Giridih vide letter no. 101/Patna dated 17.01.1984 issued by the office of Directorate, Adult Education, Bihar 29. 2381/2014 Sanatan Soren Petitioner appointed to the post Petitioner retired from his of Supervisor vide letter memo service on 31..01.2013 as a no. 1015 /Patna dated 05.04.1982 Upper Division Clerk in Home issued by Directorate of Adult Department officer at Education, Bihar Secretariat, Project building, Dhurva Ranchi under the Ministry of Home Affairs, Government of

Jharkhand after absorption 30. 2538/2014 Sangram Das Appointed on the post of Clerk- Petitioner retired from his cum-Typist in Adult Education, service on 31.07.2012 as Clerk Bihar, under Education in Upgraded +2 Kalyan High Department , Government of School, Pandu, Palamau, under Bihar in the office of Simdega , the Ministry of HRD, District- Gumla vide letter no. Government of Jharkhand. 2327/Patna dated 02.09.1985 issued by the office of the Director, Adult Non-formal Education, Bihar.

31. 5106/2014 Murari Prasad Petitioner was appointed on the Petitioner retired on 31.10.2013 post of Clerk-cum-Accountant after absorption vide letter no. 1440 dated 29.07.1983, 32. 5207/2014 Pradhan Mahto Petitioner was appointed on the 30.6.2014 after absorption post of Adeshpal/Peon (Padchar) 21 vide memo no. 613 dated 07.08.1981 issued by the officer of Collectorate, Dumka 33. 5771/2014 Basudeo Chourasia Petitioner was appointed and he Petitioner retired on 31.07.2011 joined on 12.05.1980 on the post as a Supply Inspector, Chatra. of Supervisor in Adult Education Project, at Chatra, evident from his appointment letter no. 678 dated 10.05.1980 34. 676/2015 1. Surun Soren Petitioner no. 1 appointed on the Retired from the post of Block 2.Sunil Kumar Sinha post of Supervisor Adult Supply Inspector on 31.01.2014 Education Department, by the and 31.12.2013 respectively. order of the Director, Bihar, Patna, Vide order no. 232,dated 24.01.1981 and joined on 07.02.1981. Petitioner no. 2 appointed to the post of Supervisor, Adult Education Department by the order of the Director, Adult Education Department , Bihar, Patna vide order no. 634 dated 25.04.1980 35. 981/2015 Santosh Kumar Sinha Petitioner was appointed on the Retired from the post of Block post of Supervisor in Adult Supply Inspector on 31.08.2012 Education Department, by the order of the Director, Adult Education Department, Bihar, Patna vide order no. 634 dated 25.04.1980 Petitioners who were working as on the date of filing of their writ petitions under the Government of Jharkhand after being absorbed under notification dated 30.5.2007. S.No W.P.(S) Petitioner's/ legal heirs Date of appointment/ joining Working . No. name 1. 252/2011 Rajeshwar Mishra Petitioner was duly appointed as Officer-Staff in the Adult and Non-formal Department and was working posted against Class IV posts. Appointed on 14.7.1984 2. 484/2013 1. Niranjn Thakur Joined on 6.11.1984, 18.7.1984, working 2. Ashok Kumar Mishra 21.4.1984. 11.2.1985, 3. Pankaj Kr.

Yadav 23.11.1981, 22.12.1983 4. Jagneshwar Kr. Singh respectively 5. Anil Kr.

6. Hari Dutt Choubey 3. 2378/201 Smt. Smriti Kana Sarkar @ Petitioner was appointed to the working 3 Smriti Kala Sarkar post of Supervisor on 26.03.1981 in Noamundi in District Chaibasa in Adult Education Program under Education Department.

4. 2804/201 Binay Kumar Choudhary Joined on 21.11.1985 as a Clerk working 3 in office of Adult Education officer, Singhbhum, Chaibasa dated 21.11.1985 issued by the District Adult Education Officer, Singhbhum, Chaibasa.

5. 5223/201 1. Md. Mozammil Hasan Petitioner no.1 appointed as working 3 2. Bhol Nath Shah Supervisor on 25.5.1983, Petitioner no.2 as Clerk on 7.1.1986 6. 6107/201 1.Mahendra Nath Mahto Petitioner no. 1 was appointed as working 3 2. Diwakar Singh a Supervisor on 24.12.1982 at 22 Ranchi in Adult Education Department under the HRD Ministry and Petitioner no. 2 was appointed as a Supervisor on 14.06.1982 under the same Adult Education Department under the HRD Ministry .

7. 6969/201 1. Md. Mozammil Hassan Appointed as Adult Education working 3 2. Md. Tejamul Ansari Supervisor 3. Sadhana Ojha 4. Rukmani Devi Keshri 5. Meena Sinha 8. 3277/201 1. Surendra Prasad Rawani Petitioner no.1 appointed as a working 4 2.Panchannad Dwivedi Clerk on 22.02.1985 at Sarwan, 3. Bilayati Prasad Singh Dist-Deoghar in Adult Education 4. Sanatan Soren Department under the HRD Ministry petitioner no. 2 was appointed as a Clerk on 29.03.1985 at Jamui, Bihar under the same Adult Education Department under the HRD Ministry and petitioner no. 3 was appointed as a Clerk on 17.09.1985 at Sarwan Dist-Deoghar under the same Adult Education Department under the same HRD Ministry and petitioner no. 4 was appointed as a Clerk on 08.04.1985 at Kathikund, Dumka under the same Ministry, 9. 4501/201 1. Anil Kumar Jha The petitioner were appointed to working 4 2.Dhirendra Prasad the post of Clerk/Peon in @ Birendra Prasad between 1978 to 1987 in Adult 3. Lala Uma Shankar Dayal Education.

4. Bindo Mandal 5. Krishna Kumar Karn 6. Deo Shankar Jha 7. Ksdhitish Ram 10. 371/2016 Anil Kumar Upadhyay Petitioner was appointed as a working Clerk on 27.07.1985 at Sasaram, Dist- Rohtas vide memo no. 289 dated 27.07.1985 in Adult Education Department under the HRD Department, Ministry .

11. 1865/201 Ganpat Kumar Bhagat Petitioner appointed as a working 6 Supervisor in pursuance of Memo No. 1974/Patna dated 28.09.1983 issued by the office of Directorate, Adult Education, Bihar under HRD and joined his service at Vishunupur District- Gumla 12. 3333/201 Shyam Singh Petitioner appointed as Clerk- working 6 cum-Typist on 22.11.1986 in District Adult Education Officer, Singhbhum, Chaibasa vide memo no. 465/Patna dated 17.10.1986 issued by Adult and Non-formal Education, Bihar, Patna in Adult Education Department under the HRD Ministry.

13. 3400/201 Shyam Sundar Prasad Petitioner was appointed as a working 6 Peon on 09.11.1986 in Adult Education Office, Palamau vide memo no. 01/Palamau dated 27.10.1986 issued by District Adult Education Office, Palamau in Adult Education Department 23 under the HRD Ministry. It is pertinent to state here that these petitioners did not initially question the terms and conditions of their absorption till the present batch of writ petitions. Broadly speaking all these writ petitioners have sought for 2 reliefs:- (i) payment of post retirement benefits such as pension, gratuity, leave encashment, provident fund, group insurance etc. after reaching the age of superannuation on their absorption;(ii) salary for the period 16.5.2001 till their absorption under the respective departments pursuant to the resolution dated 30.5.2007 of the H.R.D. Department or their retirement / death before being absorbed.

7. During the course of arguments, learned counsel for the petitioners have heavily relied upon the Division Bench judgment of Patna High Court in the case of The Bihar State Adult & Non-formal Educational Employees Association & others Vrs. The State of Bihar & others reported in 1996(2) PLJR394in CWJC No. 5036 of 1992 and other analogous cases. Those writ petitions were preferred by the persons holding the post of supervisor under the Adult Education Programme, when their services were terminated consequent upon abolition of posts of

supervisor by the Government of India. They had alternatively prayed for their absorption / adjustment in the State Government against any other post equivalent to the post in terms of the resolution dated 5.9.1979 issued by the Department of Personnel, Administrative Reforms, Government of Bihar. Petitioners herein sought to draw strength from the aforesaid judgment in order to substantiate their plea that all the petitioners after introduction of the Adult Education Programme w.e.f October 1978 fulfilled the requisite criteria and were appointed on regular pay scale in different phases by the State Government on the basis of recommendation of a High Power Selection Committee. Such programme was approved for 5 years by the Planning Commission and grant-in-aid was released by the State Government on yearly basis. The project was intended to impart a functional literacy to illiterate persons in the age group of 15 to 35 years, predominantly living in the rural areas. In compliance of such schemes different Adult Education Programmes were started all over the country including the State of Bihar. The Central Government revised the scheme in the year 1987-88 and suggested the State Government to substantially reduce the number of centers and supervision costs. Persons engaged under the said scheme were required to function only on honorarium basis for limited hours. The State Government abolished 771 posts of Adult Education Supervisors after adjusting them suitably to different posts as per memo dated 19.12.1990. Remaining 361 supervisors continued to work until abolition of the posts in 1991. In the year 1990-91 the Government of India sent revised scheme to the State Government. As per the staffing pattern under this scheme, in place of Project Officer, post of Coordinator at a honorarium of Rs.1800/- per month was created. Since the posts of supervisors 24 were already abolished, therefore, in their places ' Prerak' were to be engaged on honorarium basis @ Rs. 400/- per month. Learned Division Bench after a detailed discussion went on to hold that petitioners initial appointment made under the scheme was purely temporary, therefore it may not be possible to ask the Respondent Authorities to regularize their services. The learned Division Bench did not consider it proper to quash the order of their termination. However, having regard to the long service rendered by them and taking into consideration the entire facts and circumstances of the case, direction was issued upon the Respondent Authorities inter alia ; (a) to allow the petitioners and interveners to

continue against 771 posts, against which they were adjusted in terms of the letter of the concerned department dated 19th December, 1990 . Such adjustment was to be made as per their seniority or (b) in case those posts have also been abolished , take steps to absorb/ adjust the petitioners along with the interveners in a similar manner like the employees of Consolidation Department and (c) if for any justified reason, directions contained at (a) and (b) were not possible, then to take decision similar to the State of Uttar Pradesh indicated in the earlier para 18 of the said judgment and adjust/absorb them accordingly.

8. According to the petitioners pursuant to the said judgment by office order dated 15.3.1998 bearing memo no.412 - 415, several such employees holding the post of Adult Education Supervisor were appointed on temporary basis in non-formal education / adult education project conducted by the Directorate of Mass Education on the vacant and sanctioned posts of Project Officers in the prescribed scale of Rs.1600- 2700. Learned counsel for the petitioners contended that these persons in the cadre of Adult Education Supervisor were taken in regular establishment and continued to function after bifurcation of the parent State of Bihar under the State of Jharkhand till they were declared surplus w.e.f. 15.5.2001. Rest of the petitioners who were holding different posts, such as Stenographer, Clerk cum Accountant , Clerk cum Typist, Jeep Driver and Peon however were never terminated and their services continued after creation of the State of Jharkhand till they were also declared surplus w.e.f. 15.5.2001.

9. Based on these facts, learned counsel for the petitioners, Mr. K.P.Deo has also contended that there was no occasion for the Government of Jharkhand to appoint such persons afresh by the resolution dated 30.5.2007 . These persons were never terminated rather declared surplus w.e.f. 15.5.2001. Therefore, services of such petitioners should be treated in regular establishment with effect from the date of their joining pursuant to their appointment vide notification dated 15.3.1998. Their services have to be counted for the purpose of seniority and pensionary benefits under the Government of Jharkhand. Arguments in support of rest of the petitioners' claim for counting of their service under the Adult education / Non-formal Education Project have made also on the plea that they have rendered services for long periods of more than 10-15 years 25 before they were

rendered surplus w.e.f. 15.5.2001 by the Government of Jharkhand for no fault of theirs. The reasons for the petitioners to raise their instant grievance relating to claim of post retirement benefits have been actuated on account of the decision of the Respondent Government of Jharkhand to treat their absorption as fresh appointment and accordingly covered under the CPF scheme brought into w.e.f. 1.12.2004. Petitioners seem to have realized that their past service were not being counted for the purposes of pensionary benefits nor were they treated to be under the G.P.F scheme which came to an end by 30.11.2004.

10. In the aforesaid factual background, divergent views rendered by learned Division Bench of this Court in two sets of judgments are required to be dealt with. The first of the judgments relied upon by learned counsel for the petitioner to substantiate the claim of reckoning their past services for the purposes of grant of pensionary benefits is that of Bhubaneshwar Mahto Vrs. State of Jharkhand ( W.P.S. No. 4751 of 2003) decided by the learned Single Judge on 21.11.2003. Material facts borne out from the judgment of the learned Single Judge show that Bhubaneshwar Mahto was appointed on 10.12.1968 as a Peon of the State Library and retired on 31.7.2001 under the Mass Education Department of State. The Respondents contested the plea by stating that Mass Education Department had been closed since 15.5.2001 and the petitioner could not be entitled for salary for the subsequent period. Learned Single Judge held that the Respondents did not dispute that he was regular employee of the State. He was working since 1968 and is entitled to pension, gratuity, leave encashment, etc in accordance with law. It was further held that even if the scheme was closed since 15.5.2001 but the employee was not retrenched, since there was no latches on the part of the employee, Respondent cannot deny him salary. Accordingly the Respondents were directed to pay salary for the period 16.5.2001 to 31.7.2001 (i.e. the date of retirement with all admitted retirement benefits counting the aforesaid period) such as full pension, gratuity, leave encashment, provident fund etc within the stipulated period, failing which, they were made liable to pay interest and cost.

11. It is apparent from the bare facts noted in the judgment of the learned Single Judge that petitioner, Bhubaneshwar Mahto was treated as regular employee of the State having been appointed on 10.12.1968, much before the Adult Education

/ Non- formal Education Project started in the year 1978. Therefore, it was held that he would be entitled not only to the salary up to his date of retirement on 31.7.2001 but all other post retirement benefits. L.P.A. No. 515 of 2004 preferred by the aggrieved State of Jharkhand was dismissed on the ground of delay vide order dated 27.4.2005. The S.L.P(CC No. 8793 of 2005) preferred by the State of Jharkhand against the judgment passed in L.P.A. was also dismissed in limine after condonation of delay vide order dated 30.9.2005 finding no merits. 26 12.

The second case in chronological order is that of Bimal Kumar Sinha Vrs. State of Jharkhand (in W.P.C. No. 6440 of 2002) rendered by the learned Single Judge on 12.5.2003. The aggrieved State of Jharkhand went in appeal in L.P.A. No.188/2004. Learned Division Bench of this Court came to a categorical finding that the appointment of the writ petitioner/ Respondent therein was made under the adult education/ non-formal education scheme which was abolished and thereafter the Respondent was reappointed on the specific conditions that past services rendered by him will not be taken into account. The opinion of the Hon'ble Supreme Court rendered in the case of Dhyhan Singh Vrs. State of Haryana reported in 2002(2) SCC656 was relied and quoted therein. Learned Division Bench therefore, set aside the order passed by the Learned Single Judge whereunder a direction was issued to the Respondent State to count the past service rendered under the Adult Education / Non-formal Education scheme. Evidently, the learned Division Bench did not approve of the view that services rendered by the said writ petitioner under the Adult Education/ Non- formal Education programme would be counted for the purposes of pensionary benefits even after his reappointment in view of the specific condition that past services rendered will not be taken into account. No Special Leave Application was preferred by the writ petitioner against the judgment passed by the Learned Division Bench. Learned counsel for the petitioners in the present batch of writ petitions have tried to rely upon the observation made in the L.P.A. order granting liberty to the writ petitioner therein to make representation showing order of the Government of Bihar where the condition relating to past service has been relaxed. It appears that on rejection of such a representation, the said writ petitioner, Bimal Kumar Sinha has again preferred writ petition before this Court in W.P.S. No. 1344 of 2010.

13. The next case in chronological order as per the date of judgment is that of Ila Sinha Vs. State of Jharkhand(W.P.S. No. 574 of 2008), which was decided by the learned Single Judge vide order dated 28.11.2008. Ila Sinha was appointed as Supervisor under the Adult Education Project vide order dated 28.2.1980. It was her case that after merger of Adult Education/ Non-formal Education Scheme in the unified department in 1990, a number of posts were abolished including the post of Supervisor. Consequently several employees working as Supervisor including the petitioner, Ila Sinha were retrenched on 16.6.1992. According to her, pursuant to the judgment dated 24.5.1996 passed in C.W.J.C. No. 5036 of 1992 by the Patna High Court, several employees including the petitioner were reinstated in service. She accordingly also joined on 15.3.1998 and was posted as Project Officer, Hiranpur, Pakur from 8.5.1998. After the reorganization of the State of Bihar on 15.1.2000, Mass Education/ Non-formal Education Programme was abolished by the Government of India and consequently Government of Jharkhand also closed the 27 same w.e.f. 15.5.2001 declaring the employees as excess. Thereafter she superannuated on 31.6.2003. She approached this Court in W.P.S. No. 574 of 2008 seeking admissible dues and post retirement benefits as the Respondents had denied pension and gratuity. Petitioner, Ila Sinha relied upon the judgment of the learned Single Judge of this Court in the case of Bhubaneswar Mahto(supra) and also pointed out that L.P.A and S.L.P preferred by the aggrieved State of Jharkhand had also been dismissed thereafter. From para 6 of the said judgment, it further appears that reliance was placed on the judgment rendered by the learned Single Judge in the case of Bimal Kumar Sinha (Supra). It appears that counter affidavit was filed on behalf of the Respondent State but the learned State Counsel conceded that the case was identical to Bhubaneswar Mahto and other cases referred by the petitioner. Learned Single Judge accordingly held that petitioner, Ila Sinha was covered by the judgment of this Court in the case of Bhubaneswar Mahto. In those circumstances, Respondents were directed to pay post retirement benefits of the petitioner including pension, gratuity and leave encashment within stipulated period.

14. It would be indeed pertinent to mention here that the judgment in the case of Ila Sinha was passed by learned Single Judge on 28.11.2008 after passing of the judgment by the learned Division Bench in L.P.A. No. 188 of 2004 on 20.3.2008 in

the case of Bimal Kumar Sinha (supra) where following the judgment rendered by the Apex Court in the case of Dhyan Singh(supra) it was clearly held that past service under the Adult Education Scheme could not be counted for the purposes of pensionary benefits. Though the judgment rendered by the learned Single Judge in the case of Bimal Kumar Sinha (W.P.S. No. 640/2002) was relied by the petitioner, Ila Sinha but the fact that the learned Division Bench had set aside the said judgment in L.P.A. No. 188 of 2004 on 20.3.2008 were apparently not brought to the notice of the Court. It would also be relevant to mention here that though the learned Single Judge in the case of Ila Sinha relied upon the case of Bhubaneshwar Mahto (supra) but from the material facts noted from the said judgment, it is apparent that Ila Sinha was appointed in the year 1980 after the Adult Education Project was started and therefore her case was clearly distinguishable from that of Bhubaneshwar Mahto who was found to be a regular employee of the State having been appointed in the year 1968, at least 10 years before the Adult Education Project was started and sponsored by the Central Government. The L.P.A No. 359 of 2009 was preferred by the aggrieved State of Jharkhand against the judgment of learned Single Judge in the case of Ila Sinha with a delay of 226 days. Learned Division Bench was of the view that since the judgment rendered in the case of 28 Bhubaneshwar Mahto relied upon by the learned Single Judge was confirmed up to the Supreme Court, the State had no reason to prefer an appeal which was otherwise suffering from huge delay of 226 days. It was of the opinion that even if the delay be ignored, the appeal has no substance on merit. Accordingly, the appeal was dismissed on merit as also on the ground of delay. The State of Jharkhand being aggrieved went in S.L.P (Civil No.) 1377 of 2011. The Hon'ble Apex Court by its judgment dated 2.8.2013 dismissed it in limine after condoning the delay, however leaving the question of law open. The judgment of the Hon'ble Supreme Court is quoted herein below for better appreciation:- Heard learned counsel for the petitioners. Delay Condoned The special leave petitions are dismissed. However , question of law is kept open.

15. The case next in the chronology is that of Nirmala Kumari Vrs. State of Jharkhand, W.P.S. No. 460 of 2008 which was disposed of by the learned Single Judge on 1.5.2009. Petitioner Nirmala Kumari also was initially appointed on the post of Adult Education Supervisor and reached the age of superannuation on

31.7.2004. She had also approached this Court for payment of retirement benefits including pension, gratuity, leave encashment etc. claiming herself to be in continuous service till the date of her retirement. The learned Single Judge found that the Respondents had not disputed the fact that petitioner was regular employee of the State. It was accordingly held that though the project launched by the Directorate of Mass Education was closed on 15.5.2001, since the employees were not retrenched, Respondents cannot deny salary and retirement benefit legitimately earned. In those circumstances, direction was issued for payment of arrears of salary and the entire retirement benefit including pension with interest within stipulated period. It is evident from the instant judgment also that employee Nirmala Kumari was appointed as Adult Education Supervisor in the year 1980 and had been rendered surplus after closure of the scheme w.e.f. 15.5.2001. She was held entitled to the arrears of salary after closure of the scheme and retirement benefit also. The judgment of learned Division Bench in the case of Bimal Kumar Sinha(supra) dated 20.3.2008 that benefit of past service would not be counted for the period spent under the Adult Education Programme scheme for the purposes of pensionary benefits was once again not brought to the notice of the learned Single Judge. L.P.A No. 130 of 2010 preferred by the State of Jharkhand against the judgment of the learned Single Judge was dismissed on 13.8.2010 as being time barred on account of huge delay of 287 days. The S.L.P (C.C.) No. 3780 of 2011 preferred by the aggrieved State of Jharkhand against the judgment rendered in L.P.A. 29 No. 130 of 2010 was also dismissed in limine though after condonation of delay by the Hon'ble Supreme Court vide judgment dated 7.3.2011.

16. W.P.S. No. 2774 of 2004 preferred by Zahid Hussain & others seeking salary w.e.f. 16.5.2001 is next in the chronology which was decided by judgment dated 26.3.2010 passed by the learned Single Judge relying upon the judgment in the case of Bhubaneshwar Mahto. Learned Single Judge recorded the admitted facts that petitioners were initially appointed as Adult Education Supervisor under the Adult Education Project, which was closed w.e.f. 16.5.2001. Subsequently pursuant to the State Government's decision to absorb such surplus employees of the Non-formal Education Project in various departments, petitioners had been absorbed in service. Respondents were accordingly directed to pay the salary to

these petitioners for the period 16.5.2001 till the date of their absorption within a stipulated time. No prayer for payment of post retirement benefits by counting their service under the Adult Education Scheme was made nor was any direction issued to that effect. L.P.A. No. 435 of 2010 preferred by the aggrieved State of Jharkhand was dismissed by referring to the judgment passed in L.P.A. No. 555 of 2004 in the case of Bhubaneshwar Mahto, L.P.A. No. 359 of 2009 in the case of Ila Sinha, L.P.A. No. 130 of 2010 in the case of Nirmala Kumari as of similarly situated employees who were found entitled to their salary for the said period. The S.L.P.(CC) No. 19981 of 2011 preferred by the aggrieved State of Jharkhand was dismissed in limine vide judgment dated 16.12.2011. Apparently the claim of past services under the Adult Education Project for pensionary benefits was neither made nor granted. The State of Jharkhand preferred a Review Petition (Civil) no. 2120 of 2012, which was, however also rejected by order dated 30.10.2012 by the Hon'ble Supreme Court finding no merits.

17. In the case of Asgar Ali & others Vrs. State of Jharkhand (W.P.S. No. 729 of 2004) petitioners sought payment of salary from 16.5.2001 till January, 2008 i.e. before their absorption in February 2008. This was also disposed of by the learned Single Judge vide judgment dated 4.1.2010 directing payment of salary for the period with interest relying upon the judgment rendered in the case of Bhubaneshwar Mahto . It is evident there from that no claim for counting of past service under the Adult Education Project for the purpose of pensionary benefits were raised or decided in the instant writ petition. The L.P.A No. 533 of 2012 preferred by the aggrieved State of Jharkhand was dismissed on 1.10.2013. The judgment passed in the case of Ila Sinha (supra) was also relied upon by the writ petitioners before the learned Division Bench in support of their case. The fact that they were employees under Non-formal Education Project sponsored by the Central Government and that the said project had been closed, was also recorded by the learned Division Bench. The State of Jharkhand however went in S.L.P.(CC) No. 10361-10364 of 2014 being aggrieved by the order 30 passed by in L.P.A. No. 533 of 2012 and L.P.A. No. 29 of 2013 arising out Civil Review No. 53 of 2010 against the same judgment dated 4.1.2010 passed in the original writ petition, W.P.S. No. 729 of 2004. The Hon'ble Supreme Court vide judgment dated 18.7.2014 dismissed the S.L.P with the modification as under : Delay Condoned

Having heard Mr. P.P.Rao learned senior counsel for the petitioners and Mr. Akhilesh Kumar Pandey learned counsel for the respondents and taken into view the order passed in SLP(c) No. 1377 of 2011 etc., we are not inclined to interfere. However, the payment of arrears to the employees shall be done in a phased manner within a period of two years from today. With the aforesaid modification in the order of High Court, the special leave petitions stands dismissed.

18. It is clear from perusal of the judgment passed by the Hon'ble Supreme Court that the State of Jharkhand was directed to make payments of arrears to the employees in phased manner within a period of 2 years from the date of judgment. The writ petitioners, Asgar Ali and others had approached this Court only for payment of arrears of salary from 16.5.2001 till January, 2008 i.e. till their absorption under the State. Neither was any claim for counting of past services for pensionary benefits made in the writ petition nor was any finding rendered thereupon by this Court in the writ petition or L.P.A or even by the Hon'ble Supreme Court in S.L.P.

19. The case of Najib Neyaz Ahmad Vrs. State of Jharkhand in W.P.S. No. 5968 of 2010 is the next in the chronological order. Petitioner, Najib Neyaz Ahmad had approached this Court as the Respondents refused to count past services under the Adult Education / Mass Education scheme for the purpose of pensionary benefits. Learned Single Judge by order dated 4.2.2011 categorically rejected the plea of the petitioner for counting his past service for the purpose of pension as the petitioner had accepted re-employment without protest. Hence, he was stopped from questioning, once he had enjoyed full benefits for the full term of the employment. Learned Single Judge also observed that though the petitioner had taken through certain orders of this Court but in none of these orders, this aspect had been referred to. It observed that under equitable jurisdiction of this Court under Article 226 of the Constitution of India petitioner could not be permitted to take a U-turn. Being aggrieved, the writ petitioner, Najib Neyaz Ahmad went in appeal before the learned Division Bench of this Court in L.P.A No. 107 of 2011. Learned Division Bench took note of the judgment rendered in L.P.A No. 515 of 2004 in the case of Bhubaneshwar Mahto and that of L.P.A. No. 435 of 2010 in the case of Zahid Hussain & others against which S.L.P preferred by the State had

also been dismissed. Accordingly, the judgment of the learned Single Judge was set aside. The learned Appellate Court was of the opinion that petitioner is enforcing his legal rights and cannot be stopped from raising same simply on account of a condition incorporated in the appointment order which is contrary to the rules as 31 well as guidelines given by this Court. The judgment of the learned Single Judge was set aside directing the Respondents to redetermine the case of the petitioner by taking into account his past services. Petitioners have also relied upon the order passed on Cont.(Civil) No. 699 of 2011 dated 4.1.2013. The said petitioner has also been granted the post retirement benefits counting his past service. Petitioners have also relied upon the judgment i.e. of the learned Single Judge of the Patna High Court in the case of Baliram Singh others Vrs. State of Bihar & others in C.W.J.C. No. 20780 of 2010 and another case dated 19.4.2011. Relying upon rule 103 of the Bihar Pension Rule the learned Single Judge directed the Respondents to count their services between 1992-1998 on notional basis for the purposes of monetary benefit from 1998 onwards and post retirement monetary benefits. It was also clarified that petitioners and other supervisors shall not be entitled for the salary of the period in any manner and shall not claim any seniority over other government servants. Petitioners have also relied upon judgment passed in the case of Sita Ram Vs. State of Jharkhand & others, W.P.C No. 834 of 2005 (Annexure-13 to W.P.S. No. 4110 of 13). The said petitioner was appointed on 25.6.1979 as peon under the Adult Education Department, Government of Bihar and later on his services were taken on deputation as Typist cum Clerk. The said petitioner was also rendered surplus after closing of Adult Education Scheme w.e.f. 16.5.2001. Thereafter he had been absorbed under the State Government by notification dated 1.2.2008. Petitioner Sita Ram had also sought payment of salary for the period November 2002 till January 2008. In the light of judgment rendered in the case Bhubaneshwar Mahto, the writ petition was disposed of by the learned Single Judge directing payment of salary for the said period.

20. From the aforesaid chronological narrative, it is evident that Special Leave to Appeal (CC.8793 of 2005 ) in the case of Bhubaneshwar Mahto, Special Leave to Appeal (Civil) No. 1377 of 2011 in the case of Ila Sinha, Special Leave to Appeal(CC. No 3780 of 2011) in the case of Nirmala Kumar, Special Leave to

Appeal (CC19981of 2011) in the case of Zahid Hussain & others were dismissed in limine by the Hon'ble Supreme Court. In the Special Leave to Appeal (CC No. 10361-10364 of 2014) preferred by the State of Jharkhand against the judgment dated 1.10.2013 in L.P.A. No. 533 of 2012 arising out of W.P.C. No. 729 of 2004 in the case of Asgar Ali & others, the question involved was in relation to the claim of arrears of salary since 16.5.2001 upon closure of the Adult Education / Non-formal Education Project when the petitioners were rendered surplus. No direction was issued for payment of post retirement benefits by counting their past services under the Adult Education / Non- formal Education Scheme.

21. In this background, the question involved in the present reference, as also noted in the order of the Learned Single Judge dated 25.6.2015, is whether petitioners are 32 entitled to claim pensionary benefits by reckoning their past services under Adult Education cum Non-formal Education Project? Moreover, when there was a clear stipulation in their notification of absorption dated 30.5.2007 that they were to be treated as fresh appointees and their past services could not be counted for the purpose of their seniority and pay protection. It is once again necessary to reiterate that in view of the directions passed by the Hon'ble Supreme Court in the case of Asgar Ali & others (supra) dated 18.7.2014 , State Government is bound to pay arrears of salary for the period to such persons who were rendered surplus after closure of the scheme till the date of their absorption.

22. Petitioners have forcefully contended that after dismissal of S.L.P.s, even in limine in the aforesaid cases, the instant issue has attained finality. In this regard it is therefore of seminal importance to rely upon the opinion of the Hon'ble Supreme Court in the case of Kunhayammed v. State of Kerala reported in (2000) 6 SCC359 The relevant para 39 to 44 of the said judgment is quoted herein below:-

39. We have catalogued and dealt with all the available decisions of this Court brought to our notice on the point at issue. It is clear that as amongst the several two-Judge Bench decisions there is a conflict of opinion and needs to be set at rest. The source of power conferring binding efficacy on decisions of this Court is not uniform in all such decisions. Reference is found having been made to (i)

Article 141 of the Constitution, (ii) doctrine of merger, (iii) res judicata, and (iv) rule of discipline flowing from this Court being the highest court of the land.

40. A petition seeking grant of special leave to appeal may be rejected for several reasons. For example, it may be rejected (i) as barred by time, or (ii) being a defective presentation, (iii) the petitioner having no locus standi to file the petition, (iv) the conduct of the petitioner disentitling him to any indulgence by the court, (v) the question raised by the petitioner for consideration by this Court being not fit for consideration or deserving being dealt with by the Apex Court of the country and so on. The expression often employed by this Court while disposing of such petitions are - heard and dismissed, dismissed, dismissed as barred by time and so on. May be that at the admission stage itself the opposite party appears on caveat or on notice and offers contest to the maintainability of the petition. The Court may apply its mind to the merit worthiness of the petitioners prayer seeking leave to file an appeal and having formed an opinion may say dismissed on merits. Such an order may be passed even ex parte, that is, in the absence of the opposite party. In any case, the dismissal would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are the merits of the special leave petition only. In our opinion neither doctrine of merger nor Article 141 of the Constitution is attracted to such an order. Grounds entitling exercise of review jurisdiction conferred by Order 47 Rule 1 CPC or any other statutory provision or allowing review of an order passed in exercise of writ or supervisory jurisdiction of the High Court (where also the principles underlying or emerging from Order 47 Rule 1 CPC act as guidelines) are not necessarily the same on which this Court exercises discretion to grant or not to grant special leave to appeal while disposing of a petition for the purpose. Mere rejection of a special leave petition does not take away the jurisdiction of the court, tribunal or forum whose order forms the subject-matter of petition for special leave to review its own order if grounds for exercise of review jurisdiction are shown to exist. Where the order rejecting an SLP is a speaking order, that is, where reasons have been assigned by this Court for rejecting the petition for special leave and are stated in the order still the order remains the one rejecting prayer for the grant of leave to

appeal. The petitioner has been turned away at the threshold without having been allowed to enter in the appellate jurisdiction of this Court. Here also the doctrine of merger would not apply. But the law stated or declared by this Court in its order shall attract applicability of Article 141 of the Constitution. The reasons assigned by this Court in its order expressing its adjudication (expressly or by necessary implication) on point of fact or law shall take away the jurisdiction of any other court, tribunal or authority to express any opinion in conflict with or in departure from the view taken by this Court because permitting to do so would be subversive of judicial discipline and an affront to the order of this Court. However this would be so not by reference to the doctrine of merger.

41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court.

42. To merge means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality. (See *Corpus Juris Secundum*, Vol. LVII, pp. 1067-68.) 43. We may look at the issue from another angle. The Supreme Court cannot and does not reverse or modify the decree or order

appealed against while deciding a petition for special leave to appeal. What is impugned before the Supreme Court can be reversed or modified only after granting leave to appeal and then assuming appellate jurisdiction over it. If the order impugned before the Supreme Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage.

44. To sum up, our conclusions are: (i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law. (ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal. 34 (iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter. (iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed. (v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in

the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties. (vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation. (vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC.

23. Learned A.A.G Mr. Jai Prakash representing State has also relied upon the decision of the Hon'ble Supreme Court in the case of Vannattankandy Ibrayi Vrs. Kunhbdulla Hajee reported in (2001) 1 SCC564 wherein at para 23 of the report it has been held as under:- ..This Court a number of times has held that any special leave petition dismissed by this Court without giving a reason has no binding force on its subsequent decisions...

24. It follows from the ratio quoted above that when the S.L.P is dismissed by a non-speaking order, in limine, where no reason has been assigned and no law has been declared by the Supreme Court, neither the Doctrine of Merger nor Article 141 of the Constitution of India is attracted to such an order. Where the order rejecting the S.L.P is speaking order i.e. where reason has been assigned by the Apex Court for rejecting the petition for Special Leave and are stated in the order, still the order remains the one 35 rejecting prayer for the grant of leave to appeal. Petitioner has been turned away at the threshold without having been allowed to enter in the appellate jurisdiction of the Apex Court. Here also the Doctrine of Merger would not apply. But the law stated or declaration by the Hon'ble Supreme Court in its order shall attract applicability of Article 141 of the Constitution. The reasons assigned by the Apex court in its order expressing its adjudication

(expressly or by necessary implication) on the point of fact or law shall take away jurisdiction of any other Court, Tribunal or Authority to express any opinion in conflict with or departure from the view taken by the Apex Court because permitting to do so would be subversive of judicial discipline. However, this should not be so by reference to the Doctrine of Merger. Once the S.L.P is granted, the order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of Doctrine of Merger. It would also not make any difference if the order is speaking or non-speaking one. As has been further elucidated in the passage quoted above, the Hon'ble Supreme Court cannot and does not reverse or modify the decree/ order appealed against while deciding the petition of Special Leave.

25. In all the judgments relied upon by learned counsel for the petitioners starting from Special Leave to Appeal (CC) No.8793 of 2005 in the case of Bhubaneshwar Mahto ; Special Leave to Appeal (Civil) No. 1377 of 2011 in the case of Ila Sinha; Special Leave to Appeal(CC. No 3780 of 2011) in the case of Nirmala Kumari; Special Leave to Appeal (CC19981of 2011) in the case of Zahid Hussain & others, Special Leave Petitions preferred by the aggrieved State of Jharkhand were dismissed in limine by a non-speaking order by the Hon'ble Supreme Court. In the case of Ila Sinha, in fact the Hon'ble Supreme Court while dismissing Special Leave to Appeal (Civil) No. 1377 of 2011 vide judgment dated 2.10.2013 left the question of law open. It can therefore be safely said that the issue involved in the present reference is not one which has been rendered final on adjudication in any of these matters by the Hon'ble Supreme Court. The question therefore posed before this larger Bench is res integra and open for consideration i.e. whether the past services of such employees under the Adult Education cum Non-formal Education Scheme can be counted for the purpose of their seniority and pensionary benefits? and; whether the opinion of the learned Division Bench of this Court in L.P.A. No. 188 of 2004, State of Jharkhand vs. Bimal Kumar Sinha or the decisions relied upon by the petitioner in the other line of cases such as Bhubneshwar Mahto, Ila Sinha, Zahid Hussain & others being L.P.A. No. 515 of 2004 , L.P.A. No. 359 of 2009 and L.P.A No.435 of 2010 respectively, is the correct view? It is relevant to mention here that the case of Bhubneshwar Mahto is

distinguishable on facts as already discussed in the earlier paragraphs. Bhubneshwar Mahto was treated as regular employee of the State Government having been appointed 36 in the year 1968 under the Government service, 10 years before the Adult Education Project was started in the year 1978, unlike cases of other persons who were appointed under the Adult Education / Non-formal Education Scheme itself.

26. We now proceed to delve upon the question as to whether service rendered under such centrally sponsored scheme through grant by the Central and /or by the State Government could be treated as regular service on a permanent and substantive post under the State Government, and whether such past services could be counted for pensionary benefits . Learned A.A.G representing State in support of their submission on the instant issue has relied upon judgments rendered by the Hon'ble Supreme Court in the case of Delhi Development Horticulture Employees' Union Vrs. Delhi Administration, Delhi and others reported in AIR 1992 SC789 Surendra Kumar Gyani Vrs. State of Rajasthan and another; AIR 1993 SC115Para 14, State of Himachal Pradesh through the Secretary, Agriculture to the Govt. of Himachal Pradesh Vrs. Nodha Ram & others ; AIR 1997 SC1445 Dhyan Singh & others vrs. State of Haryana & others ; 2002(10) SCC656 Surendra Kumar Sharma Vrs. Vikas Adhikari and another ;2003(5) SCC12para 4), Gurbachan Lal Vrs. Regional Engineering College, Kurukshetra and others; 2007 (11) SCC102 para 26 and 52).

27. In the case of Delhi Development Horticulture Employees' Union (supra) the petitioner workmen employed on daily wage had sought absorption as regular employee under the Delhi Administration and for prohibiting the Respondents from terminating their services. These workmen were provided daily wage employment under the scheme for plantation of trees taken up at various sites of rural areas of Delhi under the Rural Landless Employment Guarantee Programme launched on 15.8.1983 under the 6th year plan. The National Rural Employment Programme started in October 1980 replaced the Food For Work Programme existing under the 5 th year plan, with a larger objective to alleviate rural poverty by providing employment opportunities to them. In these background the Hon'ble Supreme Court at para 14 of the report held as under:- Para 14 ..The above figures show

that if the resources used for the Jawahar Rozgar Yojna were in their entirety to be used for providing full employment throughout the year, they would have given employment only to a small percentage of the population in need of income, the remaining vast majority being left with no income whatsoever. No fault could, therefore, be found with the limited object of the scheme given the limited resources at the disposal of the State. Those employed under the scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularisation, is to frustrate the scheme itself. No court can be a party to such exercise. It is wrong to approach the problems of those employed under such schemes with a view to providing them with full employment and guaranteeing equal pay for equal work. These concepts, in the context of such schemes are both unwarranted and misplaced. They will do more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would benefit a few at the cost of the many starving poor for whom the schemes are meant. That would also force the State to wind up the existing schemes and forbid them from introducing the new ones, for want of resources. This is not to say that the problems of the unemployed deserve no consideration or sympathy. This is only to emphasize that even among the unemployed a distinction exists between those who live below and above the poverty line, those in need of partial and those in need of full employment, the educated and uneducated, the rural and urban unemployed etc. (underline supplied to add emphasis, not part of the original text) 28. In the case of Surendra Kumar Gyani (supra) the Hon'ble Supreme Court refused to interfere in the judgment rendered by the learned Division Bench of the Rajasthan High Court on being satisfied with the stand of the Respondent- State that creation of temporary post in the cadre of Lower Division Clerk was intended to tackle the volume of work in the General Provident Fund and State Insurance Department as a stop gap measure. The persons recruited as daily wagers were also clearly informed that appointment was neither permanent or even temporary and could be terminated without any notice. As a matter of fact, 180 persons were properly recruited by the Rajasthan Public Service Commission and were appointed. The aforesaid judgment lends support to the view of the Respondent State that the

terms and conditions incorporated at the time of their appointment binds such employees who after being absorbed / appointed cannot turn around and question the conditions of such absorption.

29. The case of Dhyan Singh & others (supra) is in fact a direct judgment on the very issue involved in the present matters. Petitioner Dhyan Singh and other had also claimed service rendered under the Adult Education / Non-formal education scheme for the purpose of grant of pensionary benefits as well as for fixation of pay asking them to be treated as employees under the establishment of the Government. Non-formal Education Scheme under which petitioners were working as Adult Education Supervisor was abolished where after they had approached the Apex Court in Writ Petition No. 1040 of 1990 seeking a mandamus to the State government for their absorption in any regular cadre of the State Government. The State of Haryana conveyed its intention to absorb the applicants in State's service as and when vacancies in the cadre of Social Studies Teachers and Masters are available. On the basis of the said statement the writ petition was disposed of with a direction that Government should utilize the past experience of these persons by absorbing them suitably as and when vacancies would occur in the post. The appellants were recruited to the post of Teachers pursuant thereto on different dates in 1993 and taken as fresh recruits. On being approached thereafter, the High Court refused to allow their plea of treating their past services for the purpose of determining the initial amount of salary or for the pensionary benefits which the appellants would receive on superannuation from their 38 regular service. In the aforesaid factual background, which is similar to the facts of the present case, the Apex Court has held as under:- These appeals and the writ petition raised a common question as to whether the services rendered as an Adult Education Supervisor under a Non-formal Education Scheme evolved by the State of Haryana can be counted for the purpose of granting pensionary benefits as well as for the purpose of fixation of his pay, when such an employee is recruited to a regular post under the State Government either with or without break of service. Needless to mention that these appellants after having served for a number of years under the Rural Education Literacy Project/State Adult Education Programme the Scheme itself under which they had been discharging their duties stood abolished, and consequently the appellants ceased to be employees. They

had approached this Court in a writ petition, which was registered as Writ Petition No. 1040 of 1990 seeking a mandamus to the State Government for their absorption in any regular cadre of the State Government. In the said case, the counsel appearing for the State of Haryana fairly stated that the Government is prepared to absorb the applicants in the States service as and when vacancies in the cadre of Social Studies Teachers and Masters are available, and on the basis of the said statement made by the counsel appearing for the State of Haryana the writ petition was disposed of with the direction that the Government should utilize the past experience of these persons by absorbing them suitably as and when vacancies would occur in the post, as already stated. Pursuant to the said direction of this Court, the appellants were recruited to the post of Teachers on different dates in the year 1993, and they were taken in as fresh recruits. Their salary having been fixed at the initial stage of the scale of pay for the post in question, the appellants, therefore, approached the High Court seeking relief that their pay in the scale of pay should be fixed up taking the past services into account, and that their past services rendered under the Scheme should also be taken into account for the purpose of deciding their pension. The High Court relying upon the circular issued by the Government on 13-11-1995 came to the conclusion that no part of the services rendered by the appellants as Supervisors in the Adult Education Scheme can be considered either for the purpose of determining the initial amount of salary which they would get on their regular absorption nor can the same be taken into account for deciding the pensionary benefits, ultimately, which the appellants would receive on superannuation from the regular services. It is this judgment of the High Court, which is the subject-matter of challenge in these appeals. Mr Pankaj Kalra, appearing for the appellants strenuously contended that by judgment of this Court the appellants having been given the regular pay scale while continuing as Adult Education Supervisors under the Scheme on the basis that they were discharging full-time duties, there is no rationale to deny the relief sought for by the appellants in the writ petition. Mr Kalra also contended that the High Court was totally in error by coming to the conclusion that the appellants had rendered service as part-time Supervisors, which is belied by the earlier decision of this Court. He further contended that since under the government rules and regulations the temporary

employees, the ad hoc employees and the work-charged employees are entitled to count their services for the purposes of getting the pensionary benefits, it would not be fair to discriminate against this particular group of employees, though undoubtedly, they had served the period under a particular scheme. Having considered the two contentions made, and having applied our mind to the rules and regulations that were shown to us, we are not in a position to accept either of the contentions raised by Mr Kalra. The continuance/engagement of the appellants under the specific scheme cannot be held to be an employment under any establishment of the Government. Such schemes are taken up for certain contingencies when 39 money for the same is provided either by the Central Government or at times by some foreign countries. But the employment under such scheme not being a part of the formal cadre of the State Government, it is difficult to hold that the period for which an employee rendered service under such scheme can be counted either for the purposes of deciding their pensionary benefits or even for fixing of their salary in the scale of pay once they are regularly absorbed. The judgment of this Court pursuant to which the appellants were absorbed as against regular posts in the Government itself would indicate that the Court had taken a compassionate view, and not on any rights which flowed from the past services rendered by the appellants under the Scheme in question, and that also under the concession of the counsel appearing for the State Government. We have not been shown any rules or regulations of the State, which even confer pensionary benefits for such services rendered by the appellants. In this view of the matter, it is difficult for us to find any infirmity with the impugned judgment of the High Court. We, therefore, see no merits in these appeals and the writ petition, which are accordingly dismissed, but in the circumstances, there will be no order as to costs. (Emphasis supplied) 30. The learned Division Bench in the case of Bimal Kumar Sinha profitably relied upon the ratio rendered in the case of Dhyani Singh & others and set aside the judgment of the learned Single Judge directing the Respondents to count past services rendered under Adult Education/ Non-formal Education Scheme. It would not be out of place to mention here that in none of the judgments rendered by the learned Single Judge thereafter in the case of Ila Sinha, Nirmala Kumari, Zahid Hussain & others or Najib Neyaz Ahmad, the decision rendered in the case of Bimal Kumar Sinha (Supra) was considered or

brought to the notice of the learned Court. It further appears that even before the learned Division Bench in L.P.A. No. 359 of 2009, 130 of 2010, 435 of 2010 and 107 of 2011, the said judgment was never brought to notice or considered.

31. In the case of Surendra Kumar Sharma; 2003(5) SCC12 the Appellant who was employed as Junior Engineer on daily wage for the period of 100 days under Rural Employment Programme which merged into Jawaharlal Nehru Rozgar Yojna approached the High Court on termination of his appointment. The High Court dismissed the writ petition finding that the scheme itself has been abolished and question of regularization does not arise. The employment was of a temporary nature co-terminus with the scheme itself. At para 4 and 5 of the report the Hon'ble Supreme Court has referred to the decisions rendered earlier on the point as under;- 4. Recently, dealing with such scheme or project employees in S.M. Nilajkar v. Telecom, District Manager, Karnataka this Court observed: (SCC p. 36, para 11)

11. It is common knowledge that the Government as a welfare State floats several schemes and projects generating employment opportunities, though they are short-lived. The objective is to meet the need of the moment. The benefit of such schemes and projects is that for the duration they exist, they provide employment and livelihood to such persons as would not have been able to secure the same but for such schemes or projects. If the workmen employed for fulfilling the need of such passing-phase projects or schemes were to become a liability on the employer State by too liberally interpreting the labour laws in favour of the workmen, then the same may well act as a disincentive to the State for floating such schemes and the State may opt to keep away from initiating such schemes and projects even in times of dire need, because it may feel that by opening the gates of welfare it would be letting in onerous obligations entailed upon it by extended application of the labour laws.

5. A matter as to termination of employment caused by abolition of posts consequent upon the schemes having been abolished for non-availability of funds came up for the consideration of this Court in Rajendra v. State of Rajasthan. It was held that when posts temporarily created for fulfilling the needs of a particular

project or scheme limited in its duration come to an end because the need for the project comes to an end either because the need was fulfilled or the project had to be abandoned wholly or partially for want of funds, the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged, because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have funds available for the purpose.

32. In the case of Gurbachan Lal; (2007)11 SCC102 the dispute arose out of termination of service of the appellant by the Respondent college. The appointment of the appellant on the post of Senior Project Leader was made under a scheme framed by the Department of Science and Technology, National Science and Technology Entrepreneurship Development Board (NSTEDB) by providing financial assistance for a period of 3 years or till the end of the 7<sup>th</sup> five year plan, whichever would be earlier, after which the educational institution would bear the responsibility to continue its functioning. The conditions of appointment clearly indicated that it was purely temporary and services can be terminated by either side without assigning any reason at one month's notice in writing or on payment of one month's pay and allowances in lieu thereof. The Hon'ble Supreme Court agreed with the decision of the High Court which held that scheme had come to an end on the stoppage of grant-in-aid and held that appellant would not be entitled to be absorbed in the mainstream nor would be entitled to become a permanent employee of it.

33. The proposition of law which follows from the decisions quoted herein above, is that continuous engagement of person under a specific scheme cannot be held to be employment under any regular establishment of the Government. Such schemes are taken for certain contingencies when money for the same are provided either by the Central government and / or by the State government but the employment not being part of the formal cadre of the State government, services rendered by such employees under the scheme cannot be counted for the purpose of deciding pensionary benefits or even for fixation of salary in the scale of pay once they are regularly absorbed.

34. Undisputedly, in the present batch of cases all these petitioners (except four writ petitioners) were engaged under the Adult Education / Non-formal Education Scheme, which was launched and sponsored by the Central Government in the year 1978. The scheme itself came to a close on 1.4.2001 by the Central Government and consequently by the Government of Jharkhand also w.e.f. 15.5.2001. Such persons like the 41 petitioners who were working as on 15.5.2001 were declared surplus. Thereafter a conscious decision was taken by the Government of Jharkhand vide resolution dated 30.5.2007 of Department of Human Resources Development to absorb such employees who were rendered surplus in different posts in different departments in the prescribed scale of pay with a clear stipulation that their absorption shall be treated as fresh appointment. The condition at clause 11 and 12 of the said notification also stipulated that they will not get the benefit of seniority on the basis of their past services and also pay protection. All these petitioners/ absorbed employees duly accepted their absorption. However, the grievance relating to their past services were raised subsequently as would appear from the pleadings of the respective writ petitions when the State Government treated them as fresh appointees under the Contributory Provident Fund Scheme, brought into effect from 1.12.2004. Petitioners had expected that they would remain under General Provident Fund scheme which came to be replaced by the CPF scheme. Petitioners having accepted their appointment under resolution dated 30.5.2007 with its stipulation and conditions are therefore also estopped to turn around and claim benefit of their past services now.

35. While dealing with the instant question, it is also necessary to advert to the relevant provisions of Jharkhand Pension Rules, which have a bearing on the issue at hand:- Rule 16:- General revenues include all revenues and public moneys raised or received by the Central and the Provincial Governments and exclude the revenue of local funds. Rule 29:- Pensionable service means service which qualifies the government servant performing it to receive a pension from general revenues. Rule 31:- Permanent post means a post carrying a definite rate of pay and sanctioned without limit of time. Rule 38:- Substantive pay means the pay other than special pay, personal pay or emoluments classed as pay by the Provincial government under rule 26(a)(iii) to which a government servant is

entitled on account of a post to which he has been appointed substantively or by reasons of his substantive position in a cadre. Rule 40:- Temporary post means a post carrying a definite rate of pay and sanctioned for a limited time. CHAPTER III GENERAL PROVISIONS RELATING TO GRANT OF PENSION SECTION-1- GENERAL Rule 42:- Every pension shall be held to have been granted subject to the conditions contained in Chapter VIII. Chapter IV contains provisions relating to service qualifying for pension. Section II thereof deals with conditions of qualification. Rule 58,59,60,61 and 74 under various sub sections of this Chapter are quoted herein below:- Rule 58:- The service of 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. 42 Rule 59:- The Provincial Government may, however, in the case of service paid from general revenues, even though either or both of conditions (1) and (2) are not fulfilled- (1) declare that any specified kind of service rendered in a non-gazetted capacity shall qualify for pension; (2) in individual cases, and subject to such conditions as it may think fit to impose in each case, direct that service rendered by a Government servant shall count for pension. Rule 60:- The service of a Government servant does not qualify unless he is appointed and his duties and pay are regulated by the Government, or under conditions determined by the Government. The following are examples of Government servants exclude from pension by this rule; (1) Employees of a municipality, (2) Employees of grant-in-aid schools and institutions. (3) Service on an establishment paid from the house hold allowance of the Governor or from his contract establishment allowance. Rule 61:- Service does not qualify unless the Government servant holds substantively a post on a permanent establishment. Rule 74:- Services which satisfied the conditions prescribed in sub- sections(2) and (3) qualifies , or does not qualify, according to the source from which it is paid; with reference to this rule, service is classified as follows:- (a) Paid from the general revenues. (b) Paid from local funds. (c) Paid from funds in respect to which the Government hold the position of trustee. (d) Paid by fees levied by law, or under the authority of the Govt. or by commission. (e) Paid by the grant, in accordance with law and custom, of a tenure in land, or of a source of income, or right to collect money.

35. It is evident from the provisions of the pension rules quoted herein above that pensionable service means service which qualifies the government servant performing it to receive a pension from general revenues. Three conditions of qualification are prescribed under Rule 58, i.e., (1) the service must be under Government, (2) the employment must be substantive and permanent and (3) the service must be paid by Government.

36. Rule 59(1) provides that the provincial / State Government can declare that any specific kind of service rendered in a non-gazetted capacity shall qualify for pension, even though either or both of conditions (1) and (2) are not fulfilled. Rule 59(2) provides that the State Government may in individual cases, subject to such conditions as may be imposed, treat service rendered by such government servant as fit to be counted for pension, even though either or both of conditions (1) and (2) are not fulfilled. However, in the present case, neither has any declaration of the State Government in general terms been made nor any direction in individual cases issued in favour of any such petitioners.

37. Mr. Sudarshan Shrivastava, learned counsel representing the office of Accountant General, Jharkhand has while taking this Court to the aforesaid provisions of the pension rules emphasized the requirement for satisfying all the conditions enumerated under Rule 58 and such other Rules for an employee to qualify for pension 43 from the general revenues of the State. He has also referred to the provisions of Rule 61 which stipulates that service does not qualify for pension unless it is held on substantive basis on a permanent establishment. According to him the post held by these petitioners under the Adult Education/ Non-formal Education Scheme was not substantive on a permanent establishment of the Government and cannot be treated as regular service under the Government. Their salary and honorarium were paid out of grant received from the Central and /or by the State Government. Such payment does not fall under the categories enumerated under Rule 74 relating to source of remuneration. It also does not fulfill the third condition of Rule 58 that the service should be paid by the Government.

38. Learned counsel for the Accountant General has referred to the Constitutional provisions i.e. Article 149 of the Constitution of India and the Act/ rules made thereunder. He submitted that as a custodian of accounts, the office of Comptroller and Auditor General is responsible to satisfy itself that any such payment sanctioned by the State Government is in conformity with statutory rules such as Rule 201 under the Pension Rule. Rule 201 stipulates as under:- Rule 201(1):- A pension which is certified by the Accountant General to be clearly and strictly admissible under the rules shall be sanctioned - (a) in any case, by the Provincial Government; (b) in the case of non-gazetted Government servant, by the Government servant who has the authority to fill the appointment vacated by the retiring Government Servant. (2) The sanctioning authority has special responsibility of ensuring that orders sanctioning the pension are sent to the Accountant- General in time enough to enable him to issue the pension payment order not later than the date on which the Government servant is due to retire. Order sanctioning the pension may issue not more than one month in advance of the due date of retirement, and the Accountant- General may issue the pension payment order not more than a fortnight in advance thereof.

39. Learned counsel has also referred to the provisions of the Constitution of India under Article 266 and 279 under Chapter-I Part- XII. Learned counsel Mr. Sudarshan Srivastava placed strong reliance upon the judgment rendered in the case of Union of India and others Vrs. Rakesh Kumar & others reported in 2001(4) SCC309 para 21 thereof, in order to bring home the point that this Court should not issue directions which are contrary to the statutory Rules. He further submits that no right can be claimed by such persons on the basis of such a decision rendered contrary to statutory provisions, nor can there be any estoppel. If by an erroneous interpretation of the Rules, pensionary benefits are granted to someone, it would not be perpetuated by a decision of the Court. In such cases, there is no application of Article 14 of the Constitution. According to the learned counsel for the Accountant General, any order or directions issued dehors the statutory rules are to be held as per incuriam. The decision rendered by the learned Division Bench of this Court in L.P.A. Nos. 515 of 2014, 359 44 of 2009, 435 of 2010 relied upon by the petitioners had not taken into account the statutory provisions under the Jharkhand Pension. These decisions cannot be treated as

precedents. Learned counsel has further submitted that the Hon'ble Supreme Court in the case of Ila Siha has while dismissing the S.L.P. in limine also left the question of law open. Therefore this issue is open for this Court to decide in the present reference. Payments made to one or the other employees such as Ila Sinha, Niramala Kumari, Sita Ram, Zahid Hussain etc. having been made in teeth of the statutory provisions, would not clothe the petitioners with a legal right to claim such benefits, as it would amount to perpetuating an illegality. This Court therefore should uphold the law and declare that petitioners cannot claim the benefits of past services rendered under Adult education cum Non-formal Education scheme for the purpose of their pensionary benefits after their fresh appointment / absorption under the Government of Jharkhand. He has also pointed out that abolition of Non-formal Education scheme is not covered under Rule 103(d) as is apparent from the reading of the provisions of rule 71 read with rule 108 of the Pension Rules. Apart from that, conditions required for qualifying service under Rule 58 have also not been considered by the learned Single Judge of the Patna High Court in the case of Baliram Singh & others (supra) relied by the petitioners. Even otherwise the decision of the Government of Bihar to count past services of such surplus employees cannot have a binding effect on the State of Jharkhand, it being a Sovereign entity in itself. Petitioners' case have to stand on their own legs. Mr. Srivastava however submits that the case of Ila Sinha, Nirmala Kumari, Zahid Hussain, etc. wherein the respective S.L.Ps have been dismissed in limine, cannot be opened now as the case of such persons have become final. However, this Court may upon declaration of the law make it applicable to the case of all other persons including the petitioners as well. It is also submitted that huge financial consequences would otherwise entail upon the State Government without the sanction of law. Moreover, the declaration of law made by this Court upholding the view taken by the learned Division Bench in the case of Bimal Kumar Sinha would have far reaching consequences in respect of other persons / employees also who have worked under any such scheme / project, sponsored by the Central and / or the State Government where their past services cannot be counted as regular service under the permanent establishment for pensionary benefits also.

40. Learned counsel for the petitioners have reiterated their submission in reply. Provisions of Rule 59 have also been referred to. Apparently, no such general or individual declaration has been shown to be made by the State Government relaxing the conditions enumerated under Rule 58. Conditions at clause 11 and 12 of the notification dated 30.5.2007, in fact, clearly stipulate that past services of such 45 appointees would not be counted for the purpose of seniority or the fixation of pay scale.

41. While moving further in the endeavour to answer the question posed for under the reference, one more aspect of the matter needs to be dealt with also. Though there does not appear to be any doubt that services of these employees were under the project or scheme sponsored by the Central Government, arguments have been advanced on behalf of the petitioners relying upon notification dated 15.3.1998 bearing no. 412-415. It is contended that pursuant to the directions passed by the Patna High Court in C.W.J.C No.5036 of 1992 dated 24.5.1996 in the case of The Bihar State Adult & Non-formal Educational Employees Association & others Vrs. The State of Bihar & others(supra), the Secondary, Primary and Adult Education Department, Government of Bihar had appointed several Adult Education Supervisors terminated earlier, on the post of Project Officer in the prescribed scale of pay by the Directorate of Mass Education under the Non-formal Education/ Adult Education Project on sanctioned and vacant post. Therefore, such petitioners in respective writ petitions, were on regular establishment working on substantive and permanent post. These petitioners have urged that having been appointed in a regular establishment, it was neither proper nor correct to appoint them again in regular establishment under the notification dated 30.5.2007 in the Department of Human Resources Development, Government of Jharkhand by way of absorption. These Employees were never terminated but only treated as surplus after closure of the Adult Education / Non-formal Education Department w.e.f. 15.5.2001 by the Government of Jharkhand pursuant to the closure of the scheme by Government of India w.e.f. 1.4.2001.

42. In this regard, it is relevant to refer to the terms and conditions incorporated in the Notification dated 15.03.1998. As per clause 3 thereof, such appointments were to be treated as new appointment and their past services were not to be

counted for the purpose of pension, promotion, time bound promotion etc. As per clause 6 thereof, their services were to be governed by the policies and principles under the Non-formal Education/ Adult Education Programme. The understanding of such petitioners who claim to be appointed under office order dated 15.3.1998 on this issue, however is fallacious on the face of it for more than one reasons discussed hereinafter. As observed herein before also and held in the case of The Bihar State Adult & Non-formal Educational Employees Association & others; 1996(2) PLJR394 by the learned Division Bench of Patna High Court, all such petitioners therein were appointed in different phases on the post of Adult Education Supervisor under the Adult Education Programme started all over the country by the Central Government with a view to impart a functional literacy to illiterate persons in the age group of 15 to 35 years predominantly living in the rural areas including the State of Bihar w.e.f. October 1978. 46 Such programme was approved for 5 years by the Planning Commission and grant-in-aid was released to the State Government on yearly basis by the Ministry with approval of the integrated financial division. Some projects were fully financed by the Central Government, while for some project, the State Government had borne the liability. Later on in 1987-88, the Government of India, Ministry of Human Resources Development, Department of Education revised the scheme leading to abolition of 771 posts of Adult Education Supervisors after adjusting them suitably to different posts as per memo dated 19.12.1990. Remaining 361 supervisors continued to work until abolition of the posts in 1991. In the year 1990-91 the Government of India sent revised scheme to the State Government. As per the staffing pattern under this scheme in place of Project Officer a post of Co-ordinator at a honorarium of Rs.1800/- per month was created. Since the posts of Supervisors were already abolished, therefore, in their places ' Prerak' were to be engaged on honorarium basis @ Rs. 400/- per month. It is in this background, Learned Division Bench after a detailed discussion went on to hold that petitioners initial appointment made under the scheme was purely temporary, therefore it may not be possible to ask the Respondent Authorities to regularize their services. The learned Division Bench did not consider it proper to quash the order of their termination. However, having regard to the long service rendered by them and taking into consideration the entire facts and circumstances of the case, 3 fold

directions were issued which have been referred to in the foregoing paragraphs. The notification dated 15.3.1998 itself shows that it was issued in compliance of the directions by the learned Division Bench of the Patna High Court. The persons named therein were appointed on a sanctioned vacant post in a prescribed scale of pay of Project Officers in the Non-formal Education under the Directorate of Mass Education with a clear stipulation that it would be treated as new appointment and their past services would not be counted for the purpose of pension, promotion, time bound promotion etc. The notification clearly stipulated at clause 6 that services of all such employees would be governed under the principles and policies of the non- formal education / adult education project. The stipulation contained therein, in unequivocal terms therefore made it clear that these appointments were in respect of the non-formal education/ adult education programme conducted under the Directorate of Mass Education. This centrally sponsored Non-formal Education programme was abolished w.e.f 1.4.2001, which is evident from letter of the Secretary cum Commissioner, Secondary, Primary, Adult Education Department, Government of Bihar to the Chief Secretary, Jharkhand through letter dated 2.2.2001(Annexure-4 enclosed to the writ petition, W.P.C. No. 4110 of 2013). It clearly stated that pursuant to the decision of the Central Government , employees working under 500 Non-formal Education Project, 37 Assistant Director, employees and staffs engaged under Non- 47 formal Education Project would be rendered surplus w.e.f 1.4.2001. List of such employees were furnished in the Appendix in 'Ka' and 'Kha' enclosed thereto. The Chief Secretary, Jharkhand was also intimated of the total number of Projects which were functional under the territory of successor State of Jharkhand . It also made reference to resolution no. 106 dated 5.9.1979 of the Department of Personnel, Administrative Reforms and Rajbhasha, which laid down guidelines for absorption of such employees working on temporary posts pursuant to the closure of such specific scheme or project. The Chief Secretary, Jharkhand was requested to consider the absorption of such serving employees of Non-formal Education Project in other departments on equivalent vacant post.

43. Respondent State in their counter affidavit have also adverted to those facts and stated that employees of the Adult Education Scheme including the petitioners who were re-employed in the year 1998 in the new centrally sponsored scheme

known as Non-formal Education Programme were rendered out of service on closure of the scheme by the Government of India in the year 2001 and consequently by the State of Jharkhand w.e.f. 15.5.2001. These employees have later on been absorbed under the Government Resolution no. 824 dated 30.5.2007 treating their absorption as new appointment with the stipulation that their past services would not be counted for the purpose of seniority or pay protection. It is also the categorical stand of the State that engagement of petitioners were only under specific scheme i.e. Adult Education/ Non-formal Education, which cannot be held to be employment under the permanent establishment of Government as this scheme was taken up for certain specific purpose and time and were funded by the Central Government for that specific period. Their employment not being part of formal cadre of the State Government, period of service under such scheme cannot be counted for the purpose of deciding the pensionary benefits. Respondents have in their counter affidavit also referred to the provisions of Jharkhand Pension Rules, such as Rule 45,58 etc. The foregoing discussion therefore makes it clear that past services of these petitioners/ employees were under the centrally sponsored scheme known as Adult Education/ Non-formal Education / Mass Education Project which was abolished w.e.f. 1.4.2001 by the Central Government and consequently w.e.f. 15.5.2001 by the Government of Jharkhand. Appointment of these petitioners/ employees under such a scheme / project therefore, cannot be treated as under regular establishment of the Government on a permanent and substantive post. Moreover, their pay and allowances were borne by the grant-in-aid released by the Central Government from time to time. That is the reason why their services were treated as surplus once the Central Government closed the scheme w.e.f. 1.4.2001. Petitioners have failed to controvert the aforesaid position on facts. 48 44. In these factual context, the ratio laid down by the Hon'ble Supreme Court in the case of Dhyan Singh (supra) squarely applies to the case of the petitioners. It can, therefore, be conclusively held that only after absorption of such petitioners/ employees under resolution dated 30.5.2007, they came into the regular establishment on substantive and permanent post under the State Government and that their services were paid by the Government. There is no declaration to the contrary in general or individual terms as contemplated under Rule 59 of the

Jharkhand Pension Rules to hold otherwise. In this context it would also be proper to state that in the judgment rendered by the learned Single Judge of the Patna High Court in the case of Baliram Singh & others (supra), the provisions of Rule 58 of the Pension Rule were not taken into consideration while solely relying on Rule 103(d) of the Pension Rule, whereas Rule 103(d) should be read along with Rule 71 and Rule 108 of the Pension Rules which contemplate abolition of permanent post held by the Government servant substantively and provide for the consequences / benefits accruable thereupon such as compensation pension, gratuity etc and counting its previous service for pension. The judgment of the learned Single Judge of the Patna High Court therefore can be held to be per incuriam. Petitioners have also sought to rely upon the decision of the Government of Bihar under the circular bearing no. 1366 dated 15.7.2013 whereby it has approved the period of services between 1992-1998 as notional period for pensionary benefits without financial benefits. Petitioners have also placed reliance upon order passed in MJC Case No. 2884 of 1996 dated 14.12.2016 by the learned Single Judge of the Patna High Court. This contempt petition was filed alleging willful disobedience of the order dated 24.5.1996 passed in C.W.J.C No. 5036 of 1992 i.e. the Bihar State Adult & Non-formal Educational Employees Association & others Vrs. The State of Bihar; 1996(2) PLJR394 According to present petitioners, Government of Jharkhand was also a party in the said contempt petition and in order to comply the order of the learned Division Bench dated 24.5.1996 had issued a resolution dated 2.12.2016. The learned Single Judge has held that absorption of such employees under resolution dated 30.5.2007 as fresh appointment along with the conditions incorporated therein, would mean that benefit of past service cannot be denied to such employees for the purpose of pensionary benefits. However, perusal of the said order shows that the School Education and Literacy Department, Government of Jharkhand through its supplementary show cause enclosing the resolution dated 2.12.2016, conveyed that in terms of the Cabinet decision, 63 employees out of 161 who are still in service in July 2016 shall be absorbed on higher post carrying the scale of Rs.5000-8000 as per 5 th P.R.C and equivalent to 6th P.R.C in the scale of Rs. 9300-34800 and pleaded that order under contempt has been complied with. In this factual background, learned Single judge of the Patna High Court observed

that the resolution apparently appeared to have 49 some contradiction. The benefit of pay revision has to be given from July, 2016 so that they are not denied to the employees who have retired or died thereafter. It is further evident that the instant contempt petition was preferred alleging disobedience of the order dated 24.5.1996 passed by the learned Division Bench of the Patna High Court in C.W.J.C. No. 5036 of 1992 and other analogous cases. The legality, validity and correctness of the resolution dated 30.5.2007 whereunder these employees were absorbed in regular government service in Jharkhand, was neither under challenge nor within the scope of the contempt petition. The State of Jharkhand even in their show cause appears to have stuck to its stand that such absorption were treated as new appointment as also contained in the terms and conditions under resolution dated 30.5.2007. The contempt petition was disposed of by the order dated 14.12.2016 holding that the State of Jharkhand has substantially complied with the order under contempt. Therefore, the issue relating to legality and validity of the conditions incorporated in the resolution dated 30.5.2007 cannot be said to have been adjudicated upon in the contempt jurisdiction by the learned Single Judge of Patna High Court in M.J.C. No. 2884 of 1996. The issue is therefore res nova or res integra. Any decision of the Government of Bihar reckoning past services for the purposes of pensionary benefits taken after bifurcation of the parent State of Bihar in itself, even otherwise does not bind the Government of Jharkhand being a sovereign State in itself.

45. The elaborate foregoing discussion on all the germane issues therefore lead to the inescapable conclusion that the past services of the petitioners / employees under the Adult Education / Non-formal Education / Mass Education scheme cannot be counted for the purpose of their pensionary benefits. The entire discussion made can be summarized in the following manner:- (i) The issue relating to counting of past services of the petitioners/ employees under the Adult Education / Non-formal Education / Mass Education scheme for the purpose of pensionary benefits has not become final as contended by the petitioners. In view of the ratio rendered by the Hon'ble Supreme Court in the case of Kunhayammed v. State of Kerala reported in (2000) 6 SCC359 upon dismissal of the Special Leave to Appeal (CC.8793 of 2005) in the case of Bhubaneshwar Mahto, Special Leave to Appeal (Civil) No. 1377 of 2011 in the case of Ila Sinha, Special Leave to

Appeal(CC. No 3780 of 2011) in the case of Nirmala Kumar, Special Leave to Appeal (CC19981of 2011) in the case of Zahid Hussain & others in limine by a nonspeaking order, it can be safely said that the issue involved in the present reference has not been rendered final on adjudication in any of these matters by the Hon'ble Supreme Court. In fact in Special Leave to Appeal (Civil) No. 1377 of 2011 in the case of Ila Sinha, the Apex Court have while dismissing the S.L.P in limine vide judgment dated 2.8.2013 left the question of law open. In the case of Asgar Ali and 50 others W.P.S. No. 729 of 2004, L.P.A. No. 53 of 2012 and Special Leave to Appeal (CC No. 10361-10364 of 2014) preferred by the State of Jharkhand against the judgment passed in L.P.A dated 1.10.2013, the petitioners therein had only sought payment of salary for the period 16.5.2001 till January, 2008 i.e. before their absorption in February, 2008. No claim for counting of past service under Adult Education Project for the purpose of pensionary benefits were raised or decided. The Hon'ble Supreme Court was not inclined to interfere in the S.L.P. which was dismissed. However, while dismissing the S.L.P. the order of the High Court was modified by directing that payment of arrears shall be done in phased manner within a period of 2 years from the date of order i.e. 18.7.2014. The claim related to the payment of arrears of salary from 16.5.2001 to the date of absorption of such employees has therefore become final. This question has neither been referred to this larger Bench as clearly observed in the order dated 25.6.2015 passed by the learned Single Judge. (ii) The judgment rendered by the Hon'ble Supreme Court in the case of Dhyan Singh (supra) is in fact a direct judgment on the very issue involved in the present matter. The Hon'ble Supreme Court in the said case have categorically held that no part of the service rendered by the Appellant as Supervisor under the Adult Education Scheme could be counted either for the purpose of deciding their pensionary benefits or for even fixation of salary in the scale of pay once they are regularly absorbed. The continuance/engagement of the appellants under the specific scheme cannot be held to be an employment under any establishment of the Government. Such employment under such scheme are not part of the formal cadre of the State Government. The ratio rendered by the Hon'ble Supreme Court in the said case has rightly been relied upon by learned Division Bench of this Court in the case of Bimal Kumar Sinha in L.P.A. No. 188 of 2004 vide judgment dated 20.3.2008

holding that past services under the Adult Education Scheme cannot be counted for the purpose of pensionary benefits. (iii) In none of the judgments rendered thereafter in the case of Ila Sinha, Nirmala Kumari, Zahid Hussain, Sitaram, Najib Neyaz Ahmad, the judgment rendered in the case of Bimal Kumar Sinha in L.P.A. No. 188 of 2004 was either referred to or considered. Petitioners have strenuously tried to impress that the contention of the Respondent State in the case of Zahid Hussain in W.P.S. No. 2774 of 2004, that absorption of the petitioners was treated as fresh appointment, was categorically negated by the Learned Single Judge, holding that such petitioners cannot be given any differential treatment other than what has been given by the State Government to other similarly situated employees. However, it is apparent that the said writ petition was in respect of claim of salary w.e.f. 16.5.2001 till their absorption in service. The Notification dated 30.5.2007 was neither under challenge nor was the judgment rendered by the learned Division Bench in the case of Bimal Kumar Sinha(supra) 51 referred to or considered. Moreover in all the subsequent cases of Ila Sinha, Nirmala Kumari, Zahid Hussain etc. essentially the learned Single Judge relied upon the case of Bhubaneswar Mahto Vrs. State of Jharkhand in W.P.S. No. 4751 of 2003. We have found that Bhubaneswar Mahto was treated as a regular employee having been appointed on 10.12.1968 as a peon in the State Library much before the Adult Education Project was started in the year 1978. He was taken under the Adult Education Project thereafter and had retired on 31.7.2001 after closure of the scheme since 15.5.2001. Petitioners, Ila Sinha, Nirmala Kumari, Zahid Hussain, Sitaram, Nazib Neyaz Ahmad and others, all were appointed under the Adult Education Project after it was started in 1978 on being sponsored by the Central Government. We are therefore of the considered view that principle of law laid down in the case of Bimal Kumar Sinha (LP.A. No. 188 of 2004) by the learned Division Bench of this Court is the correct position in law.

46. We accordingly hold and answer the reference in the following terms: - None of the employees / petitioners are entitled to count their past services under the Adult Education / Non-formal Education / Mass Education scheme for the purpose of their pensionary benefits. This principle would apply to all the 3 broad categories of petitioners enumerated in the opening paragraph of the writ petition i.e. (i) those employees / petitioners who after being declared surplus have either

retired or died before they were absorbed pursuant to the notification dated 30.5.2007;(ii) the second category of petitioners who after being declared surplus w.e.f 16.5.2001 were absorbed in government service vide notification dated 30.5.2007 and have retired thereafter and (iii) the petitioners who are / were still working as on the date of filing of the writ petitions under the government of Jharkhand after being absorbed vide notification dated 30.5.2007. We uphold the conditions enumerated at clause 11 and 12 of the absorption notification dated 30.5.2007 where under appointment of such persons were treated as fresh appointment and their past services would not be counted for the purpose of seniority or initial pay fixation.

47. However, we are of the considered opinion that the aforesaid decision would apply to all such persons / petitioners/ employees whose cases have not become final pursuant to the dismissal of the S.L.P.s by the Hon'ble Supreme Court earlier such as S.L.P (Civil) No. 1377 of 2011, S.L.P. (CC. No 3780 of 2011), S.L.P (CC19981of 2011). The petitioners herein cannot claim application of Article 14 of the Constitution of India or equity or seek consideration on grounds of hardship also in such circumstances. In this regard, we derive strength from the opinion of the Hon'ble Supreme Court in the case of Union of India and others Vrs. Rakesh Kumar & others reported in 2001(4) SCC309 We are inclined to quote the relevant passage hereunder: - 52

21. Learned counsel for the respondents submitted that on the basis of the GO, a number of persons are granted pensionary benefits even though they have not completed 20 years of service, and, therefore, at this stage, the Court should not interfere and see that the pensionary benefits granted to the respondents are not disturbed and are released as early as possible. In our view, for grant of pension the members of BSF are governed by the CCS (Pension) Rules. The CCS (Pension) Rules nowhere provide that a person who has resigned before completing 20 years of service as provided in Rule 48-A is entitled to pensionary benefits. Rule 19 of the BSF Rules also does not make any provision for grant of pensionary benefits. It only provides that if a member of the Force who resigns and to whom permission in writing is granted to resign then the authority granting such permission may reduce the pensionary benefits if he is eligible to get the

pension. Therefore, by erroneous interpretation of the Rules if pensionary benefits are granted to someone it would not mean that the said mistake should be perpetuated by direction of the Court. It would be unjustifiable to submit that by appropriate writ, the Court should direct something which is contrary to the statutory rules. In such cases, there is no question of application of Article 14 of the Constitution. No person can claim any right on the basis of decision which is de hors the statutory rules nor can there be any estoppel. Further, in such cases there cannot be any consideration on the ground of hardship. If the Rules are not providing for grant of pensionary benefits it is for the authority to decide and frame appropriate rules but the Court cannot direct payment of pension on the ground of so-called hardship likely to be caused to a person who has resigned without completing qualifying service for getting pensionary benefits. As a normal rule, pensionary benefits are granted to a government servant who is required to retire on his attaining the age of compulsory retirement except in those cases where there are special provisions.

48. The question referred before this larger Bench is answered accordingly. However, as has been noted earlier, cases of individual petitioners in WPS Nos. 2458/2008, 3660/2009, 4702/2009 and 4963/13 who claim to have been appointed in government service prior to start of Adult Education Project in the year 1978 have to be dealt with by the appropriate Bench on the basis of their individual facts. Rest of the writ petitions are disposed of in the light of the aforesaid decision. (Aparesh Kumar Singh, J) H.C. Mishra, J: (H.C. Mishra, J) Dr. S.N. Pathak, J: (Dr. S.N. Pathak, J) A. Mohanty/Ranjeet/N.A.F.R.

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