

Ashok Kumar Sinha and Others Vs. Co Operative

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Court : Jharkhand

Decided On : Apr-13-2016

Appellant : Ashok Kumar Sinha and Others

Respondent : Co Operative

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 4461 of 2009
1.Bijay Kumar Jaiswal, S/o Late Bhola Nath Jaiswal, Vill. Makri, P.O & P.S Dhurki, Dist. Garhwa. 2.Purusottam Lal Srivastava, S/o Late Dukhharan Prasad, Vill. Sarki, P.O Kandi,P.S. Manjhiaon, Dist. Garhwa. 3.Isreal Haque Ansari, S/o late Ajit Mian, R/o Vill. + Post: Dhurki, P.S. Meral, Dist. Garhwa. 4.Basant Kumar Choubey, S/o Amrit Prasad Choubey, R/o Vill. Mahudi, P.O, P.S. & Dist. Garhwa. 5.Baijnath Singh, S/o Ganga Singh, R/o Vill. Bahera, P.S. Poldis, P.S. Haider Nagar, Dist. Palamau. 6.Mahendra Nath Singh, S/o Shree Gauri Shankar Singh, Vill+ Post Kadhwan, P.S. Bishrampur, Dist. Palamau. 7.Kumar Lalu Singh, S/o Keshwar Singh, Vill. Madhubana, P.O Sakaldipa, P.S. Hariharganj, Dist. Palamau. 8.Prem Kumar Sinha, S/o Late Madan Mohan Prasad, R/o Vill & P.O Redma, P.S. Taltonganj, Dist. Palamau. 9.Udeshwar Singh, S/o late Katwaru Singh, R/o vill. Mandariya, P.O Basaura, P.s. Lesliganj, Dist. Palamau. 10.Sri Binod Bihari, S/o Late Narsingh Ram, R/o Vill. Semratand, P.O Shapur, P.S.Chainpur, Dist. Palamu. 11.Surendra Prasad Singh, S/o Late Ram Sundar Singh, R/o Vill. Naudiha, P.O Naudiha, P.S. Patan, Dist. Palamu. 12.Raj Mani Singh, S/o Shree Kamata Singh, R/o Vill. Semri, P.O Murma, P.S. Bishrampur, Dist. Palamu. 13.Chandrika Mahto,

S/o Late Hari Mahto, R/o Vill. Mundariya, P.O Basaura, P.S. Lesliganj, Dist. Palamau. 14.Ramchandra Thakur, S/o Late Balku Thakur, R/o Vill & P.O Kanda, P.s. Chhatarpur, Dist. Palamau. 15.Sambhu Sharan Ram, S/o Ram Charitra, R/o Vill. Majhigawan, Narsinghpur, P.O Pathara,P.S. Chainpur, Dist. Palamau. 16.Sitaram Pandey, S/o Narad Pandey, R/o Vill: Bandua, P.O Shahpur, P.S. Chainpur, Dist. Palamau. 17.Sateyendra Prasad Singh, S/o Late Gajendra Prasad Singh, R/o Vill & P.O Naudiha, P.S. Patan, Dist: Palamau. 18.Prasidh Tiwary, S/o late Ram Janam Tiwary, R/o Vill & P.O Baidakala, P.S. Pat, Dist: Palamau. 19.Krishna Murari Ram, S/o Jhagaru Ram, R/o Vill & P.O Sudna, Bairiya Chowk, P.O & P.S. Daltonganj, Dist: Palamau. 20. Shiv Muni Ram, S/o late Goberdhan Ram, R/o Vill & P.O Sahpur, P.S. Chainpur, Dist. Palamau. ...

Petitioner Versus

1.State of Jharkhand. 2.Secretary, Cooperative Department, Government of Jharkhand, Nepal House, P.O & P.S Doranda, Dist: Ranchi. 3.Registrar, Cooperative Department, Government of Jharkhand, Nepal House, P.O & P.S Doranda, Dist: Ranchi. 2 4.Secretary, Finance, Government of Jharkhand, Nepal House, P.O & P.S Doranda, Dist: Ranchi. 5.District Cooperative OfficercumMember Secretary, P.O, P.S. & District: Palamau. 6.State of Bihar. 7.Secretary, Cooperative Department, Government of Bihar at Patna. 8.Registrar, Cooperative Department, Government of Bihar at Patna.

Respondents With

W.P.(S) No. 63 of 2010 Mahendra Prasad, S/o Late Ram Das Ram, resident of villageTisivar, P.O Tisivar, P.S. Bishrampur, District: Palamu

Petitioner Versus

1.State of Jharkhand. 2.Secretary, Cooperative Department, Government of Jharkhand, Near Golchakar, Dhurva, Ranchi. 3.Registrar, Cooperative Department, Government of Jharkhand, Near Golchakar, Dhurva, Ranchi. 4.Secretary, Finance, Government of Jharkhand, Near Golchakar, Dhurva, Ranchi. 5.District Cooperative OfficercumMember Secretary, Palamu Collectorate, Daltonganj, P.O, P.S. & District: Palamau. 6.State of Bihar. 7.Secretary, Cooperative Department, Government of Bihar, Bailey Road, Patna. 8.Registrar, Cooperative Department, Government of Bihar Bailey Road, Patna.

Respondents with W.P. (S) No. 99 of 2010 Moti Lal, S/o Late Gulab Chand Sah, resident of villageShahpur, P.O Shahpur, P.S Chainpur, District: Palamu. Versus

1.State of Jharkhand. 2.Secretary, Cooperative Department, Government of Jharkhand, Near Golchakar, Dhurva, Ranchi. 3.Registrar, Cooperative

Department, Government of Jharkhand, Near Golchakar, Dhurva, Ranchi.

4. Secretary, Finance, Government of Jharkhand, Near Golchakar, Dhurva, Ranchi.

5. District Cooperative Officer cum Member Secretary, Palamu Collectorate, Daltonganj, P.O, P.S. & District: Palamau.

6. State of Bihar.

7. Secretary, Cooperative Department, Government of Bihar, Bailey Road, Patna.

8. Registrar, Cooperative Department, Government of Bihar Bailey Road, Patna.

.... Respondents With W.P.(S) No. 280 of 2010

3 1. Shankar Prasad, son of Nand Prasad, resident of Village Ponderpola, P.O B Ployechnic, P.S. Dhanbad, District Dhanbad.

2. Sakhi Ahmad, Son of Kalimuddin Mian, Resident of Village Govinddih, P.O Kalyanpur, P.S. Dhanbad, District Dhanbad.

3. Mustakim Ansari, Son of Late Matwar Mian, resident of Village Pathuria, P.O Sarkardi, P.S. Dhanbad, District Dhanbad.

4. Sahadeo Sen, Son of Hari Ram Sen, resident of Govindpur, P.O & P.S. Govindpur, District Dhanbad.

5. Kartik Chandra mistri, Son of Late Gataru Mistri, Resident of Village Madandih, P.O Barbeedia, P.S. and District Dhanbad.

6. Yadunandan Prasad Singh, son of Chandeshwar Prasad, Resident of Village Govindpur Tundi Road, Dhanbad, Gandhi Maidan, P.O Govindpur, P.S. and District Dhanbad.

7. Md. Eyakub Kazi, son of Late Ali Neyaz Kazi, resident of Village Nawatand, P.O Ketania, Ojhadih, District Dhanbad.

8. Kishun Vishwakarma, Son of Late Karkhu Vishwakarma, Resident of Dharamshala Road, P.O Govindpur, District Dhanbad.

Versus 1. The State of Jharkhand through the Chief Secretary at Ranchi.

2. The Secretary, Department of Cooperative, Jharkhand, Ranchi.

3. The Finance Secretary, Govt. of Jharkhand at Ranchi.

4. The Commissioner, Hazaribagh Division, Hazaribagh.

5. The Deputy Commissioner, Dhanbad.

... . Respondents. With W.P. (S) No. 4478 of 2011

Shreeprasad Mahto, Son of Late Mahabir Mahto, Resident of village Khaira, P.O Gangtakola, P.S. Pathargaona, District Godda

Petitioner. Versus 1. The State of Jharkhand.

2. The Chief Secretary, State of Jharkhand, Ranchi.

3. The Deputy Commissioner, Godda, P.O, P.S. & District: Godda

4. The Block Development Officer, Pathargama, P.O & P.S. Pathargama, District: Godda.

5. Registrar, Cooperative Society, State of Jharkhand, Engineer's Hostel, Dhurwa, P.O & P.S. Dhurwa, District: Ranchi.

6. Secretary, Cooperative Society, State of Jharkhand, Project Building, Dhurwa, P.O & P.S. Dhurwa, District: Ranchi.

7. Secretary, (Personnel, Administrative & Rajbhasha), Government of Jharkhand,

Project Building, Dhurwa, P.O & P.S. Dhurwa, District: Ranchi. 8.Member SecretarycumManaging Director, Dumka, Central Cooperative Bank, Dumka, P.O & P.S. Dumka, District: Dumka. . . Respondents. With W.P. (S) No. 5287 of 2012

1.Sheo Sewak Mishra, son of Late Munu Mishra, resident of VillageMishra Toli, Khunti, P.O & P.S.: Khunti, District: Khunti. 2.Prabha Shankar Upadhyay, son of Late Lalita Prasad Uapdhyay, resident of Subhash Chowk, P.O & P.S.: Bundu, District: Ranchi. 4 3.Balgovind Mishra, son of Late Suryamani Mishra, resident of Sonahatu, P.O & P.S: Sonahatu, District: Ranchi. 4.Chandra Mohan Mahto, son of Late Raiya Mahto, resident of Village Birjamdih, P.O & P.S: Sonahatu, District: Ranchi. 5.Nakul Halwai, son of Late Kisto Halwai, resident of village & P.O Jamudag, P.s. Sonahatu, District: Ranchi. Petitioner. Versus 1.The State of Jharkhand. 2.Secretary, Coooperative Departmetn, Government of Jharkhand, Project Bhawan, P.O & P.S.: Dhurwa, District: Ranchi. 3.Deputy CommissionercumDistrict Magistrate, Ranchi, P.O GPO, P.S. Kotwali, District: Ranchi.. . Respondents. With W.P. (S) No. 7909 of 2012

1.Ashok Kumar Sinha, S/o Late Kedar Nath Sahay, resident of Mohalla Kani Bazar Near Munka Bagicha, P.O & P.S.Hazaribag, District: Hazaribag. 2.Basant Narayan Pandey, S/o Gandhi Pandey, resident of Lower Boddam Bazar, P.O & P.S. Hazaribag, District: Hazaribag. 3.Hariman Ram, S/o Late Tibhu Ram, resident of Village Banadag, P.O Sultana, P.S. Katkam Sandi, District: Hazaribag, Jharkhand. 4.Sarju Ram, S/o Late Barhan Mistri, resident of Village Dumraon, P.O Dumraon, Vialchak, P.O & P.S. Ichak, District: Hazaribag, Jharkhand. Petitioner. Versus 1.The State of Jharkhand through the Secretary Cooperative Department, Government of Jharkhand, at Project Building, P.O Dhurwa, P.S. Jagarnathpur, District: Ranchi. 2.The State of Bihar, through the Secretary, Cooperative Department, Government of Bihar, situated at New Secretariat, Bailey Road, P.O & P.S. : Secretariat, District: Patna800001, Bihar. 3.Registrar, Cooperative Society, Jharkhand, Ranchi situated at Engineers Hostel, Dhurwa, P.S.: Jagarnathpur, P.O Dhurwa, District: Ranchi, Jharkhand. 4.Registrar, Cooperative Society, Bihar, Patna, situated at New Secretariat, Bailey Road, P.O & P.S. Secretariat, District: Patna800001, Bihar. . . Respondents. With W.P. (S) No. 826 of 2015

Mritunjay Jha, son of Sri Shiv Kumar Jha, Resident of Village Derma, P.O & P.S. Sanaur, DistrictGodda. Petitioner. Versus 1.State of Jharkhand. 2.Chief Secretary, Govt. of Jharkhand,

Project Building, P.O Dhurwa, P.S. Jagarnathpur, District: Ranchi. 3.Principal Secretary, Cooperative Department, Govt. of Jharkhand, Nepal House, P.O & P.S. Doranda, District: Ranchi. 4.Joint Secretary, Cooperative Department, Govt. of Jharkhand, Nepal House, P.O & P.S.: Doranda, District: Ranchi. 5 5.Registrar, Cooperative Society, Govt. of Jharkhand, Nepal House, P.O & P.S Doranda, District: Ranchi. 6.Commissioner, Santhalpargana Divison, Dumka, P.O & P.S. Dumka, District: Dumka. 7.Deputy Commissioner, Godda, P.O & P.S: Godda, District: Godda. 8.Accountant General, Jharkhand, P.O & P.S. Doranda, District: Ranchi. . . Respondents. With W.P. (S) No. 5364 of 2014 Ghanshyam Khirhar, Son of Late Tej Narayan Khirhar, Resident of Village and P.O Taroljora, P.S. Jama District: Dumka. Petitioner. Versus 1.The State of Jharkhand. 2.The Chief Secretary, Govt. of Jharkhand, Ranchi. 3.The Joint Secretary, State. of Jharkhand, Cooperative Department, Ranchi. 4.The Secretary, State of Jharkhand, Cooperative Department, Ranchi. 5.The Registrar, Cooperative Society, State of Jharkhand, Ranchi. 6.The Deputy Commissioner, Dumka. 7.The Circle Officer, Ramgarh, Dumka. 8.The District Cooperative Officer, Dumka. 9.The State of Bihar. 10.The Accountant General (A & E), Jharkhand, Doranda, P.O & P.S. Doranda, District: Ranchi. . . Respondents. CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK For the Petitioners: Mr. Nagmani Tiwari, Adv In W.P.(S) No. 4461/09 Mr. Sanjeev Thakur, Adv In W.P.(S) No. 63 & 99/10 Mr. Sanjay Kr. Dwivedi & Rajesh Kumar Singh, Adv In W.P.(S) No.2809/10 Mr. Pratiyush Lala, Adv In W.P.(S) No. 4478/11 Mr. A.K. Sahani, Adv in W.P. (S) No. 5287/12 Mr. Raj Nandan Sahay, Sr. Adv Mr. Rabindra Prasad, Adv. In W.P.(S) No. 7909/12 Mr. Bhanu Kumar, Adv. Ms. Bharti Kumari, Adv. In W.P.(S) No. 826/15. Mr. Durga Charan Mishra, Adv. In W.P.(S) No. 5364/14 For the State of Jharkhand: Mr. Suresh Kumar, J.C to G.P. II Mr. Abhay Kumar Mishra, S.C. III Mr. Naveen Kumar Ganjhu, J.C to S.C. II Mr. M.K. Roy, Adv. Mr.Rishikesh Giri, J.C to G.P. II Ms. Nehala Sharmin, J.C to Sr.S.C II Mr. Pratiush Lala, J.C to G.P. IV6 C.A.V. on 02.02.2016 Pronounced on 13 /04/2016 Per Pramath Patnaik, J.: In all these writ applications, since the common question of facts and law are involved hence, with the consent of the respective parties, they are being heard together and are being disposed of by this common order/judgment. 2. In the aforesaid writ applications, the petitioners have inter alia, prayed for direction upon the respondents to count

their past services rendered as Paid Managers in Primary Agriculture Credit Societies (in short PACS) in the State of Jharkhand and for direction upon the respondents for extending all pensionary benefits taking into account their past services in the erstwhile post and also for quashing of order dated 07.03.2014 passed by Secretary, Department of Cooperation, Govt. of Jharkhand rejecting the claim of the petitioner to count their past service for the purpose of pension. 3. Sans details, the facts in a nutshell is that the petitioners in the aforesaid writ petitions were appointed as paid managers in PACS in different blocks. Since the paid managers were facing some financial difficulties, they preferred writ petition by way of filing C.W.J.C No. 2312 of 1991 for the absorption in Government service, which was disposed of directing the respondents to absorb the paid managers in government service. Being aggrieved, the State preferred S.L.P (C) Appeal No. 7357 of 1996, which was disposed of vide order dated 20.08.1998 upholding the order passed by Hon'ble Patna High Court directing the State of Bihar to conduct the examination for absorption of Paid Managers/petitioners taking into account of their age, experiences and services rendered to the Co operative Society. Pursuant thereto, the petitioners were absorbed in the 7 government service, after following the procedure laid down by Hon'ble Apex Court. It has further been averred that after their absorption, the petitioners continued to discharge their duties in their respective government departments.

4. Learned counsel for the petitioner submitted that Hon'ble Apex Court in the case of State of Bihar & Ors. Vs. Bihar Rajya Sahkarita Prabankhak Seva Sangh, Patna & Ors as reported in (1998) 8 SCC 218 has directed the respondents State to count the earlier service of the petitioners for the purpose of seniority and pension, but when the said order was not complied with, the petitioners preferred Contempt Petition before the Hon'ble Supreme Court, being Cont. Civil No. 27 of 2003, which was disposed of in view of the affidavit filed by the State of Bihar on 24.03.2003, stating that the order passed by the Hon'ble Court has been complied with. Learned counsel for the petitioner submitted that since petitioners before this Court were also party before the Hon'ble Supreme Court, hence, the stand taken by the State of Bihar is also applicable to them. Learned counsel for the petitioners further submitted that in deference to the order passed by Hon'ble Apex Court in Civil Appeal No. 7357 of 1996, the Government of Bihar took a decision to extend

benefits of seniority for the purpose of computing pension and other consequential benefits vide letter dated 26.02.2004 to the employees of Cooperation Department but the State of Jharkhand vide letter dated 07.03.2014 decided to remain stable on its earlier stand stating that since the past services rendered by the petitioners as paid/Cooperative Managers are not government services, their services cannot be counted for the purpose of pensionary benefits and promotion etc. In this context, it has been submitted that since the petitioners have served 8 in the unified State of Bihar, after bifurcation of the State, the petitioners deserve same benefit as have been extended to the employees serving in the State of Bihar. It has been submitted with vehemence that at the relevant point of time since the state of Jharkhand was not in existence, hence the decision taken by the State of Bihar is binding upon the respondents and the State of Jharkhand cannot resile from the stand taken by the State of Bihar before the Hon'ble apex Court. Therefore, the impugned order dated 07.03.2014 is hit by principles of promissory estoppel since the order of Hon'ble Apex Court has been passed on a consentaneous order. 5. Learned counsel for the petitioner further submitted with vehemence that the action of the respondents in not considering the past services rendered as paid managers for the purpose of pension as reflected in order dated 07.03.2014 impugned in the writ applications appears to have been passed in the teeth of violation of order passed by Hon'ble Apex Court.

6. The learned counsel for the petitioner further submitted that the action of the respondents in debarring the petitioner from the benefit of past services, seniority and pensions cannot be upheld when tested on the touchstone of Articles 14 and 16 of the Constitution of India. 7. Learned counsel for the petitioner further submitted that legally fundamental right of the petitioner flows from the order of Hon'ble Apex Court since in pursuance to the order of Hon'ble Apex Court, the petitioners having qualified the examination, they have been absorbed with the bond hope of getting post retiral benefits. 8. Learned counsel for the petitioners further submitted that assertions of the petitioners that similarly placed persons have been granted 9 pensionary benefits but the petitioners have been subjected to hostile discrimination that assertion has not been controverted by the respondents.

9. Per contra, counter affidavit has been filed on behalf of respondents. It has been submitted on behalf of respondents that the Department of Co operation, Government of Jharkhand has perused all the relevant facts regarding the terms and conditions of services applicable to the paid/co operative Managers especially in respect of their past services rendered as Paid/Cooperative Managers to the Department of Personnel, Administrative Reforms and Rajbhasha for consideration and opinion. Thereafter the matter was referred to the Law & Justice Department, Government of Jharkhand for legal consideration of the issues involved. It has been submitted that both the Personnel, Administrative Reforms & Rajbhasha Department and the Department of Law & Justice have confirmed the earlier stand of the Co operative Department in respect of past services rendered as Paid/Co operative Managers that they cannot be considered to be in Government service. Thus, the Department of Cooperative, Government of Jharkhand has come out with a considered stand vide order dated 07.03.2014 with the consent of the concerned department that the past services of the paid/Co operative Managers could not be counted for the purpose of pensionary benefits and promotion etc.

10. Learned counsel for the respondents while countering the submissions advanced by learned counsel for the petitioner submitted that the paid/Co operative Managers is neither the employees of the State Government nor the employees of the District Central Cooperative Banks rather they are the employees of the District Cadre Cooperative Society. Section 58 of the Jharkhand Pension Rules clearly depicts that benefits of pension can only be 10 extended to the Government Servants, so the departmental stand taken vide order dated 07.03.2014 has rightly and lawfully been enunciated in strict tune with the various judicial judgments/orders. 11. On the conspectus of facts, as emerged from the pleadings of the respective parties, the moot question that falls for consideration before this Court is as under: (i).Whether the petitioners, those who have been absorbed in government service, after fulfilling the criteria framed by Hon'ble Apex Court, in pursuant to judgment rendered in the case C.W.J.C. No. 2312 of 1991 affirmed upto the Hon'ble Apex Court in SLP Civil (Appeal) No. 7357 of 1996, can stake their claim for counting their past services rendered in different government departments and in view of the fact that similarly placed employees of the State of

Bihar have been given the same benefit in pursuance to resolution dated 26.02.2004 passed by the State of Bihar? (ii).Whether the impugned order dated 07.03.2014 passed by the respondents is vulnerable and unsupportable due to lack of cogent reasons so as to be amenable to be judicial review? (iii).Whether any welfare State, State being a ideal employer, can deny benefits of post retirement benefits on the ground of paucity of funds and statutory bars and statutory provisions under the relevant provisions of Pension Rules? 12. Before adverting to the aforesaid issues, it would be apposite to refer to the relevant provisions of the Jharkhand Pension Rules, which are reproduced herein below:

45. e).When a Government servant serves under an agreement which contains no stipulation regarding pension, unless the Provincial Government specially authorise him to count service towards pension. 11 58.The service of a Government servant does not qualify for pension unless it conforms to the following three conditions: First - The service must be under Government. Second - The employment must be substantive and permanent. Third - The service must be paid by Government. These three conditions are fully explained in the following subsections. 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 excluded from pension by this rule; (1)Employees of a municipality (2)Employees of grantinaid schools and institutions. (3)Service on an establishment paid from the house hold allowance of the Governor or from his contract establishment allowance. 61.Service does not qualify unless the Government servant holds substantively a post on a permanent establishment. 203.(a)The Provincial Government reserve to themselves the powers of interpreting the rules and of granting any indulgence not provided for by the rules. If any interpretation of the rules is involved, or if any indulgence not provided for by the rule is proposed, the head of department or the head of the office shall submit the case with his opinion and recommendation, to the Provincial Government in the Administrative Department concerned. (b)Until the orders of the Government are received, a recommendation for any special indulgence shall never be communicated, directly or indirectly, to the Government servant concerned. (c) An application in Pension Form 4, together with the statement of service in the second

page of that form or in forms prescribed in Chapter IX, as the case may be, shall accompany every special recommendation made under this rule.

13. On conjoint reading of the aforesaid provisions of Jharkhand Pension Rules, there is no doubt or debate that the petitioners service rendered as paid managers in PACS before absorption does not qualify for 12 pension since the conditions stated therein under Rule 58 of the Pension Rules are not fulfilled. But at the same time, the State is not denuded of its power to exercise its discretionary powers by invoking Rule 203 of the Pension Rules so as to subserve the ends of justice and equity. 14. Viewed from another angle and to understand the intent and purport of judgment passed in the case of State of Bihar & Others Vs. Bihar Rajya Sahkarita Prabandhak Seva Sangh Patna as reported in (1998) 8 SCC 218 in Civil Appeal No. 7357 of 1996, it would be beneficial to quote the relevant paragraph of that judgment, which is reproduced herein below: 8.A reasonable number of posts availableincluding even those in the process of recruitmentbe set apart for being filled up by the respondents. A separate recruitment test/examination be held. They cannot be asked to take the same examination prescribed for fresh candidates for entering the government service. The question paper(s) for the eligible respondents must be so prepared bearing in mind the conditions of the respondents such as age past service etc. After taking such examination(s) the eligible respondents may be absorbed subject to reasonable conditions as to their past service seniority and pension.

15. Admittedly, the petitioners, who are before this Court and other employees/petitioners who were party in C.W.J.C No 2312 of 1991, in pursuance to the aforesaid judgment appeared in the recruitment test/examination and after coming out successful they were absorbed in government services.

16. According to Black Law Dictionary, absorption means The act or process of including or incorporating a thing into something else meaning thereby on absorption an employee becomes part and parcel of that department absorbing him and partakes the same colour and character of the existing employees of the department. Going by the strict interpretation 13 of the Rules, the past services rendered by the petitioners would be wiped out for the purpose of computation of

pension. The literal meaning of word absorption is continuation in services of employees without interruption and the consequence enabling from such absorption is continuity in service without any break.

17. Moreover, once decision for absorption in service under the scheme of absorption has been taken, the services rendered before absorption would be deemed to be legal and valid. And at such belated stage and with a passage of years, it would not be fair on the part of the welfare state to deny/wipe out or to obliterate past services so as to deny counting their past services for computation of pension.

18. In this context, the Hon'ble Apex Court in the case of Usha Rani Dutta, Aaya/Attendant & Ors Vs. State Industrial Court, Indore & Ors as reported in (1985) 3 SCC 148 has held that after the absorption of the employees in Bhilai Steel Plant their services shall be counted since the commencement of their employment and treated to be continuous.

19. In the impugned order dated 07.03.2014, while denying to count the earlier services rendered by the petitioner in PACS, stand of paucity of funds has been taken, which in my view, the State being a welfare State, could not have taken to reject the claim of the petitioners or to discard the claim of the petitioner.

20. Though, the resolution dated 26.02.2004 passed by the State of Bihar for computation of period of pension, is not binding on the State of Jharkhand but on the ground that the employees have a human right as also a fundamental right under Article 21 which the States are bound to protect in furtherance of the human and fundamental rights of the employees 14 concerned and not by way of an enforcement of their legal rights. Hence, the State of Jharkhand may emulate the decision taken by State of Bihar or draft a new policy in this regard in deference to the purport and intent of the judgment rendered by Honble Apex Court and for considering the fact that similarly placed persons have been extended the benefit of pension and the petitioners are unfortunate one who have rendered their services in the territory of State of Jharkhand have been deprived to enjoy the fruits of pensionary benefits.

21. In view of the aforesaid facts, reasons and judicial pronouncements, the impugned order dated 07.03.2014 is hereby quashed. The respondents are directed to consider the matter afresh, taking into account the observations made by this Court in the forgoing paragraphs as expeditiously as possible preferably within a period of six months from the date of receipt/production of copy of this order.

22. With the aforesaid observations and directions, the writ petitions stand disposed of. (Pramath Patnaik, J.) Alankar/

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