

Basant Kumar Bilung and Ors Vs. Human Resource Development

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Court : Jharkhand

Decided On : Aug-12-2016

Appellant : Basant Kumar Bilung and Ors

Respondent : Human Resource Development

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 1654 of 2013 with W.P. (S) No. 758 of 2013 with W.P. (S) No. 1882 of 2013 with W.P. (S) No. 1321 of 2014 with W.P. (S) No. 1940 of 2010 with W.P. (S) No. 1363 of 2011 with W.P. (S) No. 1488 of 2011

1. Dr. (Mrs) Bharati Sinha, D/o Late Saroj Kumar Sinha, Resident of-C/o Mr. R.J.

Mishra, House No.26, Road No.1, Birsa Nagar, Near Bisra Chowk, P.O.-Hatia, P.S-Jagannathpur, District-Ranchi, Jharkhand.

2. Shri Satya Deo Singh, son of Sheo Baran Singh, Resident of-H.I.-34, Harmu Housing Colony, Harmu, P.O-Ashok Nagar, P.S. Argora, District- Ranchi, Jharkhand.

3. Mrigank Bhushan Narayan Mishra @ M.B. Mishra, Son of Late Nrisingh Narayan Mishra, Resident of -Mishra Niwas, Sarvoshwari Nagar, House No.1, Itki Road, Bajra, P.O-Hehal, District-Ranchi-834005. Petitioner (in W.P. (S) No. 1654/2013) 1. Dr. (Mrs) Manju Sharma, D/o Late Akshay Prasad Sharma, Resident of Near Subhas Chowk, Jatra Tanr, P.O. & P.S-Kokar, District-Ranchi,

Jharkhand.

2. Sri Alim Ansari @ Md. Alim Ansari, S/o Late Charku Mian, Resident of Village-Irba, P.O. Irba, P.S. Ormanjhi, District-Ranchi, Jharkhand.

3. Sri S.W. Rab @ Wasi-Ur Rab, S/o Late S. Khilil-Ur-Rab, Resident of Village-Edalhatu (Bhitta), P.O. Ranchi University, P.S. Bariatu, Dist- Ranchi, Jharkhand.

4. Mr. K.D. Singh @ Kapildeo Singh, S/o Late Ramdhari Singh, Resident of-313, University Colony, P.O. & P.S. Bariatu, Dist-Ranchi, Jharkhand.

5. Dr. Md. Hasib, S/o Md. Ishaque Ansari, Resident of -Hanthi Khana Road, Opp-Kali Mandir, P.O. & P.S. Doranda, Dist-Ranchi, Jharkhand.

6. Mr. G. Ansari @ Gafruddin Ansari, S/o Late Mohar, Resident of-Purani Ranchi (Noor Nagar), P.O-Purani Ranchi, P.S. Kotwali, Dist-Ranchi, Jharkhand.

7. Mr. Md. Nasir, S/o Late Zainul Abedin, R/o Raishi Mohalla, Gudri, P.O. & P.S-Lower Bazar, Dist-Ranchi, Jharkhand.

8. Mr. Md. Shamsul Haque, S/o Late Abdul Razzaque, R/o Millat Colony, P.O. Bariatu, P.S. Bariatu, Dist-Ranchi, Jharkhand.

9. Mr. S.N. Mishra @ Surendraa Nath Mishra, S/o Late Sita Ram Mishra, R/o Back side of D.A.V. School, Shanti Nagar, Sriyan Enclave Road, P.O. & P.S- Bariatu, Dist-Ranchi, Jharkhand.

10. Sri Y.N. Prasaad @ Yadu Nandan Prasad, S/o Late Saryu Prasad, R/o 37, Kali Sthan Road, P.O. & P.S-Lower Police Thana, Dist-Ranchi, Jharkhand. 2 11. Sri A.K. Sinha, S/o Late Tulsi Prasad, R/o Lohra Kocha, P.O. Ranchi, P.S. Lalpur, Dist-Ranchi, Jharkhand.

12. Dr. Sureshwar Pandey @ S. Pandey, S/o Late Ramjabit Pandey, R/o 3K/60, Housing Colony, P.O. & P.S. Bariatu, Dist-Ranchi, Jharkhand.

13. Mr. Sushama Kujur, D/o Late Joseph Toppo, R/o Bethel Cheshire Home Road, P.O. Bariatu, P.S. Sadar Thana, Dist-Ranchi, Jharkhand.

14. Sri Pankaj Chatteraj @ P. Chatteraj, S/o Late Kshetra Das Chatteraj, R/o 32/11, Peace Road, P.O. & P.S-Lalpur, Dist-Ranchi, Jharkhand.

15. Prof. D. Dey @ Dipankar Dey, S/o Late Dr. Sukumar Dey, R/o 60, Kanke Road, P.O. Ranchi University, P.S. Gonda, Dist-Ranchi, Jharkhand.

16. Dr. Chin Sin, S/o Late Chin Hai Chen, R/o 1 B, First Floor, Double Happiness Apartment, Lower Pee Pee Compound, Nala Road, P.O. Ranchi, P.O. Ranchi, P.S. Hindpiri, Dist-Ranchi, Jharkhand.

17. Dr. Md. Naseem Akhtar @ Nseem Akhtar, S/o Late A. Majid, R/o 3, Green Compound, Baragaon Road, P.O-Baraiatu, P.S. Sadar Thana, Dist- Ranchi, Jharkhand.

18. Dr. C.N.M Himanshu, S/o Late Ambika Choudhary, R/o Moti Thakur House, Lohra Kocha, P.O. & P.S-Lalpur, Dist-Ranchi.

19. Sri Anisur Rahman @ A. Rahman, S/o Late Abdur Rahman, R/o Rahman Manzil, 46, Dr. Fatehulla Lane, P.O. G.P.O, Ranchi, P.S. Lower Bazar, Dist-Ranchi, Jharkhand. 20.Dr. S.B. Bhattacharya, S/o Late Murli Dhar Bhattacharya, R/o Udhaw Babu Lane (St. Anna School Lane), Barhi Toli, Tharpakhna, P.O. & P.S- Lalpur, Dist-Ranchi, Jharkhand. 21.Dr. Franklin Baxla, S/o Late Marcel Baxla, R/o 77, Samlong, P.O. & P.S. Namkum, Dist-Ranchi, Jharkhand.

22. Mr. M. Badruddin, S/o Late M. Khaliluddin, R/o Road No.1, House No.10, P.O. Azad Nagar, P.S. Mango, Jamshedpur-10, Jharkhand.

23. Md. Mustajab Ali Khan, S/o Late Md. Sarfaraz Ali Khan, R/o Baitu Noor, Professors Colony, Near J.K.S. College, P.O. Azad Nagar, P.S- Mango, Jamshedpur-10, Jharkhand.

24. Prof. Qamruzzaman, S/o Late Bahar Ali, R/o House No.102, Zakir Nagar East, P.O. Azad Nagar, P.S. Jamshedpur-10, Jharkhand.

25. Mr. S.M. Amiruddin, S/o Md. Ibrahim, R/o Road No.13A, House No.7, Jawahar Nagar, P.O. Azad Nagar, P.S. Jamshedpur-10, Jharkhand.

26. Dr. Syed Khurshid Ahsan, S/o Late Syed Nazir Ahsan, R/o Road No.12, House No.1(Behind Gurudwara), P.O. Azad Nagar, P.S. Jamshedpur-10, Jharkhand.
27. Dr. Manzer Hasnain, S/o Late Manzer Shehab, R/o 513, Vatika Green Valley, Pardih Road, Near Chepa Pull, P.O. Azad Nagar, P.S. Jamshedpur- 10, Jharkhand.
28. Mr. Md. Shamim Ahmad, S/o Md. Shamim Ahmed, R/o Professors Colony, Near J.K.S. College, P.O. Azad Nagar, P.S. Jamshedpur-10, Jharkhand.
29. Dr. Sharen Ekka, S/o Mr. Patras Minj, R/o Ashok Nagar, Road No.1, P.O. Ashok Nagar, P.S. Argora, Dist-Ranchi, Jharkhand.
30. Dr. Sr. Bernadine Tirkey, S/o Late Jonus Tigga, R/o Nirmala College, P.O. & P.S. Doranda, Dist-Ranchi, Jharkhand.
31. Dr. Sr. Ignatia Lakra @ Ignatia Lakra, S/o Late Patras Lakra, R/o Nirmala College, P.O. & P.S. Doranda, Dist-Ranchi, Jharkhand.
32. Dr. Sr. Victorine, S/o Victor Mangal, R/o Nirmala College, P.O. & P.S. Doranda, Dist-Ranchi, Jharkhand. 33. Dr. (Mrs.) Pulcheria John Horo, D/o Late Joseph Bhengra, R/o 252, South Office Para, Near St. Xaviers School, P.O. & P.S. Doranda, Dist- Ranchi-834002.
34. Dr. (Mrs.) P. Singh @ Priyambada Singh, D/o Late Shree Kant Roy, R/o A-35, Harmu Housing Colony, P.O-Harmu Housing Colony, P.O. Harmu Housing Colony, P.S. Argora, Dist-Ranchi-834002, Jharkhand.
35. Mrs. Kamla Srivastava, D/o Late A.A. Nandan Srivastava, R/o Flat No.104, Takshashila Apartment, South Office Para, P.O. & P.S. Doranda, Dist-Ranchi-834002, Jharkhand.
36. Dr. Ratna Banerjee, D/o Amarnath Banerjee, R/o I-A, Amarnath Dham, Burdwan Compound, P.O. & P.S.-Lalpur, Dist-Ranchi, Jharkhand.

37. Dr. (Mrs.) Kabita Banerjee, D/o Late Kalipada Bhattacharya, Flat No.206, Aradhana Apartment, A.G. Office Road, P.O. & P.S- Doranda, Dist-Ranchi-834002, Jharkhand. 38.Dr. (Mrs.) D.R. Choudhary @ Deo Rani Choudhary, D/o Late Bal Krishna Choudhary, R/o 401, Kali Tower, H.B. Road, P.O. & P.S-Lalpur, Dist-Ranchi, Jharkhand.

39. Mrs. Karuna Mishra, D/o Late Janardan Prasad Shukla, R/o C66B, Nirala Nagar, P.O. Narala Nagar, P.S. Hasan Ganj, Nirala Nagar, Lucknow- 226020, U.P.

40. Dr. (Mrs.) Ashalata Linda, D/o Late Mahanand Kachhap, R/o Makchund Toli, Pragati Path, P.O. & P.S. Chutia, Dist-Ranchi, Jharkhand.

41. Dr. A.K. Srivastava, S/o Late Pramod Narain Sinha, R/o Diwakar Nagar, West Firing Range, Bariatu, P.O. & P.S-Bariatu, Ranchi-834009, Jharkhand. 42.Dr. Sri Ram Singh, S/o Late Chandra Deo Singh, R/o Gosain Toli, Upper Chutia, P.O. & P.S-Chutia, Dist-Ranchi, Jharkhand.

43. Dr. J.P. Sinha @ Jitendra Pd. Sinha, S/o Late Bholu Prasad, R/o House No.29, Budha Vihar, Opp-Ashok Nagar, Road No.4, P.O. Ashok Nagar P.S. Argora, Dist-Ranchi-834002, Jharkhand.

44. Dr. Birendra Kumar Sahay @ B.K. Sahay, S/o Hari Kishore Sahay, R/o New Anandpur, P.O.-Doranda, P.S. Chutia, Dist-Ranchi, Jharkhand.

45. Dr. R.P. Sahu @ Ram Prasad Sahu, S/o Late M. Sahu, R/o Lohra Kocha, Behind Plaza Cinema, H.B. Road, P.O. Ranchi, P.S. Lalpur, Ranchi-834001, Jharkhand.

46. Dr. S.K. Karn, S/o Late Hari Ballav Lal Dass, R/o Lazpat Nagar, Pundag, P.O. Pundg, P.S-Jagannathpur, Dist-Ranchi, Jharkhand.

47. Dr. V.N. Jha @ Vidyanand Jha, S/o Late Chandra Kant Jha, R/o Amrawati Colony, (Behind Railway Colony), P.O-Chutia, P.S. Ranchi.

48. Dr. Sri Krishna Pandey, S/o Late Sheo Kumar Pandey, R/o Kkrishnayan Vidya Nagar, P.O-Harmu, P.S. Sukhdeo Nagar, Dist-Ranchi, Jharkhand.

49. Anil Kumar Choudhary, S/o Manoj Mohan Choudhary, R/o Near Sarkari Godown, Manai Tanr, P.O. and P.S-Dhanbad, Dist-Dhanbad.
50. Dr. Girdhari Singh, S/o Late Sagar Ram, R/o Vikash Nagar, Katras Road, P.O. & P.S-Dhanbad, Dist-Dhanbad, Jharkhand. Petitioner (in W.P. (S) No. 758/2013) 1. Basant Kumar Bilung, Son of Late Mansidh Bilung, resident of Argora Pipartoli, Kathalmore Road, Opposite Bablu Furniture, P.O. Doranda, P.S. Argora, District Ranchi.
2. Birendra Kishore Singh, Son of Late Fulena Singh, resident of N.H. 42, Dhobi Ghat, Sector-2, P.O. Dhurwa, P.S. Jagannathpur, District- Ranchi.
3. Chandrika Singh, son of Sri R.L. Singh, resident of Sanjay Nagar, Mat Kuria, Katras Road, P.O. & P.S. Bank More, District Dhanbad. 4 4. Tarcitius Soreng, son of Josheph Soreng, resident of Kokardhelatoli, P.O. Bariyatu, P.S. Sadar, District Ranchi.
5. Chandra Nath Khalkho, son of Late Barua Khalkho, resident of Munda Garha (near T.O.P.), New Area Morabadi, P.O. & P.S. Bariyatu, District Ranchi.
6. Peter Kullu, son of Late Habil Kullu, resident of New Garden, Siromtoli, Club Road, P.O. & P.S. Chutia, District Ranchi.
7. Benedict Bilung, son of Late Eliyazar Bilung, resident of C/o Anup Dungdung, Shantinagar, Garhatoli, Kokar, P.O. Kokar, P.S. Sadar, District Ranchi.
8. Daud Runda, Son of Late Bishram Runda, resident of Katari Bagan, Road no.7, Samlong, P.O. & P.S. Namkum, District Ranchi.
9. S.M. Hasan, son of Late Dr. Mazaffar Hasan, resident of Flat no.502 Masih Complex, Road no.3, Azad Nagar, P.O. Azad Nagar, P.S. Mango, District East Singhbhum.
10. Md. Sayeed Ansari, son of Late Ramjan Ansari, resident of Goush Nagar, P.O. Kapali, P.S. Chandil, District Saraikela-Kharsawan.

11. Janeshwar Pathak, Son of Late Harihar Pathak, resident of Qtr. No.A2B Adarsh Nagar, P.O. & P.S. Dhurwa, District Ranchi.

12. Ayodhya Sah, Son of Late Raman Sah, resident of Damodarpur, Pipra, P.O. & P.S. Pipra, District East Champaran (Bihar) 13. Surya Rao, son of Late K.B. Das, resident of Chuna Bhatta, Deonagar, Krishnapuri, P.O. & P.S. Chutia, District Ranchi.

14. Fabianus Toppo, son of Late Joseph Toppo, resident of Kokar Tiril, P.O. Bariatu, P.S. Sadar, District Ranchi.

15. Adhir Kumar Sutradhar, son of Late Radha Kinkar Sutradhar, resident of H-34 Lakhi Bhawan, Dimna Basti, Near Chandra Prabha Nagar, P.O. & P.S. M.G.M. College, District East Singhbhum.

16. Swapan Kumar Lahiri, son of Late Manoranjan Lahiri, resident of 2-A Ganesh Apartment D-Block, Mandir Path, Bhatia Basti, P.O. & P.S. Kadma, District East Singhbhum.

17. Hiramani Toppo, wife of Late Bikta Toppo, resident of Shanti Ground, Mission Compound, Church Road, P.O. Church Road, P.S. Lower Bazar, District Ranchi.

..... .. Petitioner (in W.P. (S) No. 1882/2013) Upendra Narayan Choudhary S/o Late Achche Choudhary, R/o 325 Old A.G Colony, Kadru, Ranchi, P.O. Doranda, P.S. Argora, District-Ranchi. Petitioner (in W.P. (S) No. 1321/2014) Dr.

Langeshwar Nath Choubey, S/o Late Harihar Nath Choubey, R/o- Sarovar Bihar, Near Divyayan, Near Morahbadi, P.O-Morahbadi, P.S. Bariatu, District-Ranchi-8.

..... .. Petitioner (in W.P. (S) No. 1940/2010) Prof. (Dr.) Bhunwa Ram Soni, son of Late Shiv Charan Saw, resident of Shiv Charan Niwas, Dangra Toli, Ranchi, P.O. and P.S. Lower Bazar, District Ranchi. (Jharkhand). Petitioner (in W.P. (S) No. 1363/2011) 1. Prof. Md. Shamsul Haque son of Late Abdul Razzaque,

resident of Millat Colony, Bariatu, P.O. and P.S. Bariatu, District Ranchi.

2. Prof. Kapildeo Singh, son of Late Ramdhari Singh, resident of 3/3, University Colony, Bariatu, P.O. and P.S. Bariatu, District Ranchi. 5 3. Prof. Surendra Nath

Mishra, son of Late Sita Ram Mishra, resident of Shanti Nagar, Bariatu, P.O. and

P.S. Bariatu, District Ranchi. Petitioner (in W.P. (S) No. 1488/2011) Versus

1. The State of Jharkhand.

2. Chief Secretary, Government of Jharkhand, Project Building, H.E.C., P.O. and P.S-Dhurwa, District-Ranchi, Jharkhand.

3. Principal Secretary, Department of Human Resources Development (Higher Education), Government of Jharkhand, Telephone Bhawan, Near Project Building, H.E.C., P.O. and P.S. Dhurwa, District-Ranchi, Jharkhand.

4. Director, Higher Education, Department of Human Resources Development, Government of Jharkhand, Telephone Bhawan, Near Project Building, H.E.C., P.O. and P.S. Dhurwa, District-Ranchi, Jharkhand.

5. O.S.D. to His Excellency, the Governor of Jharkhand and Chancellor of Universities of Jharkhand, Raj Bhawan, Ranchi. .. Respondents (in W.P. (S) No. 1654/2013, 758/13, 1882/13 and W.P. (S) No. 1321/2014) 1. The State of Jharkhand through its Secretary, H.R.D. Department, Higher Education, Govt. of Jharkhand, Project Building, Dhurwa, Ranchi-4.

2. The Director, H.R.D. Department, Higher Education, Govt. of Jharkhand, Project Building, Dhurwa, Ranchi-4.

3. The Ranchi University through its Vice-Chancellor, Main Road, Ranchi.

4. The Registrar, Ranchi University through its Vice-Chancellor, Main Road, Ranchi.

5. The H.E. Governor-cum-Chancellor, Universities of Jharkhand, Raj Bhawan, Ranchi-1. .. Respondents (in W.P. (S) No. 1940/2010, 1363/2011 and W.P. (S) No. 1488/2011) ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK ----- For the Petitioners : M/s A. Allam, Sr. Adv. Nehala Sharmin, Adv. (in W.P. (S) No. 1654/2013) : M/s Manoj Tandon & Nehala Sharmin, Adv. (in W.P. (S) No. 758/2013) : M/s Delip Jerath, & Rajesh Kumar, Adv. (in W.P. (S) No. 1882/2013) : M/s S.K. Pandey, Adv. (in W.P. (S) No. 1363/2011, 1940/2010, 1488/2011 and W.P. (S) No. 1321/2014) For the Respondent-State : Mr. D.K. Dubey, Sr. S.C.I.

----- th CAV on:08 April, 2016 Pronounced on 12/08/2016 Per Pramath Patnaik, J.: Since the relief sought for in all the writ petitions more or less identical, with the consent of the respective counsels, all these writ applications are heard analogously and are being disposed of by this common order/judgment.

2. In the accompanied writ applications, the petitioners who are teaching/non-teaching staffs of different Minority Colleges in the State of Jharkhand have inter alia prayed for implementation of the memo no.1470 dated 19.12.2012 issued by the Principal Secretary, Department of Human Resources Development (Higher Education), Government of Jharkhand, with a modification that the said notification shall also apply in the same and similar manner with regard to those teaching/non-teaching staffs, who were appointed on or before 01.12.2004 (as mentioned in the Notification) vis-- vis it shall also apply with regard to those teaching/non-teaching staffs, who have already been retired from any of the Deficit Grant Minority Colleges of the State of Jharkhand, since the Pension Scheme itself is made applicable for the retired teaching/non-teaching staffs and the same is covered under Section 71 of the Jharkhand Universities Act as well as the Statute No.2 dated 25.11.1982 (enforced w.e.f.14.11.1980). Further prayer has been made for payment of pensionary benefits to the petitioners w.e.f. the date of implementation of the Scheme as contained in Memo No.1470 dated 19.12.2012. Further prayer has been made in the writ application for doing away the obnoxious Clause No.2 and 6 of the Scheme dated 19.12.2012 so as to modify the same to extend the benefit of Resolution No.1470 dated 19.12.2012 with regard to teaching/non-teaching staffs, who have retired prior to 19.12.2012.

3. The relevant points involved for adjudication of the writ application are stated hereunder: (I) Whether the Order as contained in Memo No.1470 dated 19.12.2012 issued by the Principal Secretary, Department of Human Resources Development (Higher Education), Government of Jharkhand debarring the similarly situated retired teaching/non-teaching staffs like petitioners is discriminatory and violative of Article 14, 15, 16, 21, 29, 30 and 300A of the Constitution of India? (II) Whether in issuing Notification No.1470 dated 19.12.2012 by the Principal Secretary, Department of Human Resources Development (Higher Education), Government of Jharkhand results in violation of

terms of the Statute as contained under Section 71 of the Universities Act as well as the Statute No.2 framed thereunder and implemented w.e.f. 14.11.1980 ? 7 (III) Whether while issuing impugned notification dated 19.12.2012 whereby persons who have retired prior to the cut of date i.e. 19.12.2012 shall not be entitled to pension, amounts to hostile discrimination by creating separate class amongst equals. (IV) Whether setting of cut off date is within the domain of the State and not discriminatory or arbitrary? (V) Whether the case of the petitioners can be distinguished from the ratio laid down by the Honble Apex Court in the case of D.S. Nakara Vs. Union of India? 4. Shorn of unnecessary details, the facts as disclosed in the aforesaid writ applications are that all the petitioners were appointed on or before 01.12.2004. Some of the petitioners were appointed as Lecturer, some as Reader and some were promoted as Professor and some of the petitioners in (W.P. (S) No.1882/2013) were appointed as non-teaching staffs in the Minority Fully Added Colleges and after rendering considerable length of services they retired. Minority Colleges in the State of Jharkhand are those colleges which are established and administered as per the Articles 29 and 30 of the Constitution of India. The Minority Colleges are run and administered by the Members of the Minority but the Governing Body are constituted by the representative of the Universities as well as the representative of the Government.

5. It would be relevant to refer the provisions of Section 71 of the Jharkhand State Universities Act, 2000. It deals about the payment of retiral dues like Pension, Gratuity, Insurance and Provident Fund etc., which is quoted hereunder: Section-71. Pension, gratuity, insurance and provident fund.- (1) The University shall, subject to such manners and conditions as may be prescribed by the Statutes, constitute any pension, gratuity, insurance or provident fund, as it may deem fit for the benefit of its officers, teachers and other employees (excluding those who are members of public services of India and whose services are lent to the University under Section 66). (2) Where any such pension, gratuity, insurance or provident fund is constituted in this manner, the State Government may declare that the provisions of the 8 Provident Funds Act, 1925 (Act No.19 of 1925) shall apply to the said Fund, as if that fund is State Provident Fund.

6. The specific Statute for the retiral benefits and for pension has been framed under Statute No.2, dated 25.11.1982, implemented from 14.11.1980, which deals about the payment of Provident Fund, Pension and Gratuity, in which three different types of Schemes were implemented, which are mentioned in the Statute itself. So far as Minority Fully Aided Colleges are concerned, the teachers who were not paid their pension and the contribution of the employees as well as the employer were used to be paid by the employer to the teachers after the retirement with admissible rate of interest but for decades together, the representations raised therein, sometimes the Government conceded the demand and sometimes the Government did not accept the demand. However, by virtue of a resolution dated 21.08.2012, the Government decided to concede to the long standing demands and implement the pensionary benefits to those teachers who belonged to fully aided Minority Colleges in the State of Jharkhand, in which it was clearly mentioned that the pensionary benefits implemented from 01.04.1972, as per the Statute No.2 mentioned above, may be implemented for the Minority Teacher (like the petitioners) under the same and similar manner as other teachers of the University and Constituent Colleges are concerned. However, in the said resolution, as contained in Memo No.1023, dated 21.08.2012 (Annexure-1 to WP(S) no.1654/2013) and especially in Clause No.4, it is mentioned that those teachers who were appointed on or before 01.12.2004, shall get the benefits but it shall be implemented only for those teachers who were working on the date of notification. This has created the anomaly and discrimination among the teaching/non-teaching staff of the Minority Colleges. After coming to know about the said resolution, the retired teaching/non-teaching staffs represented before the Government and His Excellency the Governor of Jharkhand and Chancellor of Universities. In respect to the said representation a letter was issued through OSD, as contained in Memo No.3496 dated 29.10.2012 whereby His Excellency requested the Vice Chancellor that the pensionary benefits should be given to those teachers also uniformly who have already retired, as evident from Annexure-3 to WP(S) No.1654 of 2013. But, to the utter surprise and consternation, in exercise of power vested in the Government, a notification was issued vide Memo No.1470 dated 19.12.2012 (Annexure-5 to WP(S) No.1654 of 2013) issued by the Principal Secretary, Department of Human Resources Development (Higher

Education), Government of Jharkhand whereby the pensionary benefits were allowed to the Minority Colleges teaching/non-teaching staffs in the same and similar manner as it was implemented for the teachers of other colleges but an obnoxious Clause was inserted therein that the said notification shall not be made applicable for those teachers of Minority Colleges, who have already retired or are not in service as on 19.12.2012.

7. Heard learned counsels appearing for the petitioners as well as learned Sr. S.C.I appearing for the respondents.

8. Learned counsels appearing for the petitioners have strenuously urged that the notification dated 19.12.2012 has created a class amongst class itself which are violative of Articles 14, 16, 21 and 300A of the Constitution of India. Learned counsels further submit that there are catena of judgments of the Honble Apex Court, which inter alia hold that the class amongst one class cannot be created and specially in the case of D.S. Nakara, reported in (1983) 1 SCC305 the Honble Supreme Court has been pleased to hold that the pensionary benefits which are specially meant for the persons, who are already retired and who needs some help after the retirement, but if a class is created amongst the equals, it would not be allowed to continue, so it is struck down. Learned counsels further submit that the only rider which has been imposed by the State is that the pensionary benefits shall not be allowed to those teachers who have already retired on the cut-off date i.e. the date of enforcement. This rider creates a class within a class and violates the provisions of Articles 14, 15, 21 and 300A of the Constitution of India as it violates the twin test of Article 14 that there may be reasonable classification and that classification must have nexus with the object sought to be achieved by its maker. Although the petitioners are fulfilling the other criteria like they are appointed before 01.12.2004. So, at least pensionary benefits may be allowed to the petitioners w.e.f. 19.12.2012.

9. In order to buttress his argument, learned counsel appearing for the petitioners have relied on the judgments reported in:

10. (i) AIR 1983 SC130(D.S Nakara Vs. Union of India) (Para 6, 8, 15, 32 and 49).
(ii) (2008) 9 SCC125(Union of India vs. S.P.S. Vains) (Para 26, 27 and 28). (iii)

(2011) 11 SCC429(K.J.S. Buttar vs. Union of India) (para 8, 9 and 10). (iv) (2013) 2 SCC772 (Kallakurichi Taluk Retired Officials Association, Tamil Nadu and Ors. vs. State of Tamilnadu) (para-1, 12, 32, 33, 35, 37 and 39). (v) (2015) 9 SCC540(State of Rajasthan vs. Mahendra Nath Sharns) (Para-30). (10) Per contra, a counter affidavit has been filed on behalf of the respondents, controverting the averments made in the writ application. It has been inter alia submitted that the petitioners were teaching/non-teaching staffs of the Minority Colleges, which come within the category of affiliated College and petitioners cannot compare themselves with the teaches of Constituent Colleges/Universities. As per the definition given in Section 2(i) of the Jharkhand State Universities Act, 2000 (Adopted) Constituent College means a teaching institution maintained or controlled by the University. The mode of appointment of teachers of Constituent College is different from the mode of appointment of teachers of affiliated Colleges. As per the provisions made in Sub Section 57 (A) of the Jharkhand State Universities Act, 2000 (Adopted) the governing body of Affiliated Minorities Colleges based on religion and language appoint their teachers with the approval of the Jharkhand Public Service Commission whereas, as per the provisions made in Section 58 of the Act, the teachers of University/Constituent Colleges are appointed by the Vice-Chancellor of the University on the recommendation of J.P.S.C. The provision made in Section 71 of the Jharkhand State Universities Act, 2000 (Adopted) is related with the employees of Universities including the Constituent Colleges. This provision is not related with the employees of Minority Aided Colleges or any Affiliated College, therefore, the petitioners who are teaching/non- teaching staffs are not the University employees. The employees of the Minority Colleges are not Government employees and so the State Government is not bound to extend the pensionary benefits to the teachers of Minority Colleges who have retired prior to 19.12.2012. The deficit grant 11 receiving Minority Colleges are Affiliated Colleges. Moreover, the State Government are not giving any assistance to any affiliated colleges for meeting retiral benefits to its employees prior to issuance of the impugned notification dated 19.12.2012. The extension of pensionary benefits to the employees of the Minority deficit grant-in-aid receiving Colleges is an important financial decision of the State Government and it involves a huge amount to spend on it. The

implementation of scheme from the date of notification of the resolution is not discriminatory and violative of any Article of the Constitution of India as the benefits has been extended to all such employees of the deficit grant receiving Minority Colleges, who fulfils the requisite terms and conditions mentioned in the resolution and are working on the date of issuance of the resolution and are appointed validly and regularly against posts sanctioned with finance.

11. Mr. D.K. Dubey (Sr. S.C.I.) appearing for the respondents, apart from reiterating the submissions made in the counter affidavit has assiduously submitted that the pensioners and non-pensioners do not constitute the same class. In this respect, he has referred to the decision of the Honble Apex Court reported in (1997) 1 SCC208(Commander Head Quarter, Calcutta & Ors. vs. Capt. Biblabendra Chanda), wherein at paragraph 4, it has been held as under:

4. We are of the opinion that the ratio of D.S. Nakara has no application here. D.S. Nakara prohibits discrimination between pensioners forming a single class and governed by the same Rules. It was held in that case that the date specified in the liberalised pension rules as the cut-off date was chosen arbitrarily. That is not the case here. No pension was granted to the respondent because he was not eligible therefor as per the Rules in force on the date of his retirement. The new and revised Rules (it is not necessary for the purpose of this case to go into the question whether the Rules that came into force with effect from 1-1-1986 were new Rules or merely revised or liberalised Rules) which came into force with effect from 1-1-1986 were not given retrospective effect. The respondent cannot be made retrospectively eligible for pension by virtue of these Rules in such a case. This is not a case where a discrimination is being made among pensioners who were similarly situated. Accepting the respondents contention would have very curious consequences; even a person who had retired long earlier would equally become eligible for pension on the basis of the 1986 Rules. This cannot be.

1. In this respect, he has further referred to the decision of the Honble Apex Court reported in (1991) 2 SCC104(Indian Ex-Services League & Ors. Vs. Union of India), wherein at paragraph 14, it has been held as under:

14. Nakara decision came up for consideration before another Constitution Bench recently in *Krishena Kumar v. Union of India*. The petitioners in that case were retired Railway employees who were covered by or opted for the Railway Contributory Provident Fund Scheme. It was held that PF retirees and pension retirees constitute different classes and it was never held in *Nakara* that pension retirees and PF retirees formed a homogeneous class, even though pension retirees alone did constitute a homogeneous class within which any further classification for the purpose of a liberalised pension scheme was impermissible. It was pointed out that in *Nakara*, it was never required to be decided that all the retirees for all purposes formed one class and no further classification was permissible. We have referred to this decision merely to indicate that another Constitution Bench of this Court also has read *Nakara* decision as one of limited application and there is no scope for enlarging the ambit of that decision to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different.

12. Mr. D.K. Dubey (Sr. S.C.I), in respect of the power of the State to set a cut-off date, has referred to the decision of the Honble Apex Court reported in (1993) 4 SCC62(*State of West Bengal and Ors. vs. Ratan Behari Dey and Ors.*), wherein at paragraph 7 and 8, it has been held as under:

7. In our opinion, the principle of *Nakara* has no application to the facts of this case. The precise principle enunciated in *Nakara* has been duly explained in *Krishena Kumar* by a coordinate Bench. For reasons to be assigned hereinafter, it cannot be said that prescribing April 1, 1977 as the date from which the new Regulations were to come into force is either arbitrary or discriminatory. Now, it is open to the State or to the Corporation, as the case may be, to change the conditions of service unilaterally. Terminal benefits as well as pensionary benefits constitute conditions of service. The employer has the undoubted power to revise the salaries and/or the pay scales as also terminal benefits/pensionary benefits. The power to specify a date from which the revision of pay scales or terminal benefits/pensionary benefits, as the case may be, shall take effect is a

concomitant of the said power. So long as such date is specified in a reasonable manner, i.e., without bringing about a discrimination between similarly situated persons, no interference is called for by the court in that behalf. It appears that in the Calcutta Corporation, a pension scheme was in force prior to 1914. Later, that scheme appears to have been given up and the Provident Fund Scheme introduced. Under the Provident Fund Scheme, a certain amount was deducted from the salary of the employees every month and credited to the Fund. An equal amount was contributed by the employer which too was credited to the Fund. The total amount to the credit of the employee in the Fund was paid to him on the date of his retirement. The employees, however, were demanding the introduction of a pension scheme. The demand fell on receptive ears in the year 1977 maybe because in that year the Left Front Government came to power in that State, as suggested by the writ petitioners. The State Government appointed a Commission to examine the said demand and to recommend the necessary measures in that behalf. The three members constituting the Commission differed with each other in certain particulars. The Government examined their recommendations and accepted them with certain modifications in the year 1981. After processing the matter through relevant departments, the Regulations were issued and published in the year 1982. In the above circumstances, the State Government thought that it would be appropriate to give effect to the said Regulations on and from April 1, 1977 i.e., the first day of the financial year in which the Pay Commission was appointed by the Government - a fact which could not have been unknown to the Corporation employees. We cannot say that the Government acted unreasonably in specifying the said date. It may also be said that, that was the year in which the Left Front came into power in that State, but does not detract from the validity of the aforesaid reasons assigned by the State in its counter- affidavit filed before the Division Bench of the High Court. We are not in agreement with the opinion expressed by the High Court that the reasons assigned by the State Government are neither relevant nor acceptable.

8. In this context, it may be remembered that the power of the State to specify a date with effect from which the Regulations framed, or amended, as the case may be, shall come into force is unquestioned. A date can be specified both prospectively as well as retrospectively. The only question is whether the

prescription of the date is unreasonable or discriminatory. Since we have found that the prescription of the date in this case is neither 14 arbitrary nor unreasonable, the complaint of discrimination must fail. Further, in this respect, he has referred to the decision of the Honble Apex Court reported in (2008) 14 SCC702(Government of Andhra Pradesh and Ors. vs. N. Subbarayudu and Ors.), wherein at paragraph 5 and 6, it has been held as under:

5. In a catena of decisions of this Court it has been held that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut-off dates is within the domain of the executive authority and the court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. (See State of Punjab v. Amar Nath Goyal.)

6. No doubt in D.S. Nakara v. Union of India this Court had struck down the cut-off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara case as observed in para 29 of the decision of this Court in State of Punjab v. Amar Nath Goyal.

13. In order to appreciate the rival contentions, the point to be determined the basic principles of making classification: (i) The main basic principle of making classification is that there may be reasonable differentia; (ii) That the differentia must have its nexus sought to be achieved by the Legislature.

14. In the present case, it is to be seen as to whether there is any basis for making any cut off date between those who retired before 19.12.2012 and those who shall retire after the date of Notification i.e. 19.12.2012. But, on perusal of the impugned notification dated 19.12.2012 issued by the Principal Secretary, Department of Human Resources Development (Higher Education), Government of Jharkhand, creates two class amongst the similar situated persons by making cut off date, which is discriminatory and violative of Articles 14, 15, 16, 21, 29, 30 and 300A of the Constitution of India. 15 15. After bestowing my anxious consideration to the

rivalized submissions and on perusal of the relevant documents, the petitioners have made out a case for interference on the ground of hostile discrimination with regard to the memo no.1470 dated 19.12.2012. So far as exclusion of the petitioners from the benefit of grant of pension to the teachers of Deficit Grant Minority College from the prospective effect, the artificial rider which has been imposed by the State for not allowing pensions to the retired teaching/non-teaching staffs of the Minority Colleges on the cut off date i.e the date of enforcement.

16. The conspectus of legal position which has emerges from the aforesaid pleadings is that the rider creates a class within a class and violates the provision of Articles 14, 15, 21 and 300A of the Constitution of India as it violates the twin test of Article 14 which postulates that there may be reasonable classification and that classification must have nexus with the object sought to be achieved.

17. The grievance of the petitioners for grant of pension, were engaging the attention of the Government since long. Moreover, as it appears from Annexure-3 to the W.P (S) No.1654/2013, His Excellency, the Chancellor has been pleased to direct the Vice-Chancellor of the Ranchi University to consider the cases of petitioners who retired prior to 19.12.2012. But the said recommendation of His Excellency, the Chancellor have not been taken into account in the notification dated 19.12.2012.

18. For better appreciation, it would be apposite to advert to the relevant Sections of the Jharkhand State Universities Act, 2000. Section-46. Contribution by Government to the University.- (1) The State Government shall contribute annually to the University fund a recurring grant out of the Consolidated Fund of the State which shall include all expenses of recurring nature. (2) The State Government shall calculate the amount of annual recurring grant in consultation with the Vice-Chancellor and the amount may be revised at the expiry of a period of every five years. (3) The State Government may, from time to time, contribute such additional grants to the University funds, as it may deem fit having regard to the need of expansion and development of the University or the College.

48. Approval of the Budget by the State Government.- 16 (1) Notwithstanding anything contained in this Act or the Statutes, University Ordinance or Regulation made thereunder, every University shall send its budget for every financial year to the State Government. The University shall show therein estimates of receipts and disbursement for the ensuing year. The State Government shall return the budget to the University with such modification as it may deem fit and the University shall act in conformity with such modified and approved budget. (2) At any time during the financial year, the University may send a supplementary budget to the State Government and the State Government shall return the budget to the University with such modifications and approval as it may deem proper. (3) No expenditure shall be incurred by any University unless such an expenditure has become a part of the budget as finally approved under sub-section (1) or (2).

19. On perusal of the aforesaid provision, it would be crystal clear that as per Section 46 and 48 of the Universities Act, all the Government aids are given by the Government to the Universities in order to make payment of salary or other benefits to the teachers of the Universities, which are from admitted Colleges or the Constituent Colleges or the Minority Colleges besides the Universities. So far as Section 48 is concerned, it makes the provision for budgetary aids. It is admitted case of the respective parties that either it is fully Aided Colleges or the Minority or other Constituent Units of the University, their budgets are prepared and sent to the Government. Accordingly, the entire salaries and other retiral dues are paid by the Government to the teachers of the Minority Colleges like the petitioners and other teachers of the Universities or the Constituent Colleges.

20. The Classification in between teaching/non-teaching staffs, who retired prior to and after 19.12.2012 is not legally permissible, being hit by Article 14 of the Constitution of India, since it is an unreasonable classification. In the present case, there is no such impossibility or detriment to the public interest involved if all those who retired even prior to 19.12.2012, are extended the benefit of pension in Government Aided Minority Colleges.

21. The aforesaid view of this Court, gets fortified by the decision of the Honble Apex Court reported in (2011) 11 SCC429(K.J.S. Buttar vs. 17 Union of India and

Another) wherein at paragraph 10, it has been held as under:

10. In *Union of India v. SPS Vains* it was observed: (SCC pp. 131-32, paras 26-28 & 30)

26. The said decision of the Central Government does not address the problem of a disparity having created within the same class so that two officers both retiring as Major Generals, one prior to 1-1-1996 and the other after 1-1-1996, would get two different amounts of pension. While the officers who retired prior to 1-1-1996 would now get the same pension as payable to a Brigadier on account of the stepping up of pension in keeping with the fundamental rules, the other set of Major Generals who retired after 1-1-1996 will get a higher amount of pension since they would be entitled to the benefit of the revision of pay scales after 1-1-1996.

27. In our view, it would be arbitrary to allow such a situation to continue since the same also offends the provisions of Article 14 of the Constitution.

28. The question regarding creation of different classes within the same cadre on the basis of the doctrine of intelligible differentia having nexus with the object to be achieved, has fallen for consideration at various intervals for the High Courts as well as this Court, over the years. The said question was taken up by a Constitution Bench in *D.S. Nakara* where in no uncertain terms throughout the judgment it has been repeatedly observed that the date of retirement of an employee cannot form a valid criterion for classification, for if that is the criterion those who retired by the end of the month will form a class by themselves. In the context of that case, which is similar to that of the instant case, it was held that Article 14 of the Constitution had been wholly violated, inasmuch as, the Pension Rules being statutory in character, the amended Rules, specifying a cut-off date resulted in differential and discriminatory treatment of equals in the matter of commutation of pension. It was further observed that it would have a traumatic effect on those who retired just before that date. The division which classified pensioners into two classes was held to be artificial and arbitrary and not based on any rational principle and whatever principle, if there was any, had not only no nexus to the objects sought to be achieved by amending the Pension Rules, but

was counterproductive and ran counter to the very object of the pension scheme. It was ultimately held that the classification did not satisfy the test of Article 14 of the Constitution. * * * 30. However, before we give such directions we must also observe that the submissions advanced on behalf of the Union of India cannot be accepted in view 18 of the decision in D.S. Nakara case. The object sought to be achieved was not to create a class within a class, but to ensure that the benefits of pension were made available to all persons of the same class equally. To hold otherwise would cause violence to the provisions of Article 14 of the Constitution. It could not also have been the intention of the authorities to equate the pension payable to officers of two different ranks by resorting to the step-up principle envisaged in the fundamental rules in a manner where the other officers belonging to the same cadre would be receiving a higher pension.

22. The Honbe Apex Court in case of (Kallakurichi Taluk Retired Officials Association, Tamil Nadu and Ors. vs. State of Tamilnadu) reported in (2013) 2 SCC772 at praragraph 33 and 39 has held as under:

33. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. Article 16 of the Constitution of India permits a valid classification (see State of Kerala v. N.M. Thomas). A valid classification is based on a just objective. The result to be achieved by the just objective presupposes, the choice of some for differential consideration/treatment, over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective. And secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. Legalistically, the test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Whenever a cut-off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification (or valid discrimination) must necessarily be satisfied.

39. Having given our thoughtful consideration to the controversy in hand, it is not possible for us to find a valid justification for the State Government to have classified pensioners similarly situated as the appellants herein (who had retired after 1-6-1988), from those who had retired prior thereto. Inflation, in case of all such pensioners, whether retired prior to 1-6-1988 or thereafter, would have had the same effect on all of them. The purpose of adding the component of dearness pay to wages for calculating pension is to offset the effect of inflation. In our considered view, therefore, the instant classification made by the State Government in the impugned Government Order dated 9-8-1989 placing employees who had retired after 1-6-1988 at a 19 disadvantage, vis--vis the employees who had retired prior thereto, by allowing them a lower component of dearness pay, is clearly arbitrary and discriminatory, and as such, is liable to be set aside as violative of Articles 14 and 16 of the Constitution of India.

23. On cumulative effect of the facts, reasons and judicial pronouncements, the writ petition is disposed of with direction to the respondents to reconsider and take a decision afresh, in accordance with law in issuing a corrigendum, so that the notification dated 19.12.2012 shall apply in the same and similar manner with regard to the teaching/non-teaching staffs, who have been appointed on or before 01.12.2004 and retired prior to the issuance of notification dated 19.12.2012, within a period of sixteen weeks from the date of receipt of a copy of the order.

24. With the aforesaid direction, these writ petitions stand disposed of. (Pramath Patnaik, J.) Saket/-

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