Lakshaman Kishor Vs State Of Bihar

Court: Patna High Court

Date of Decision: Dec. 14, 2021

Acts Referred: Constitution Of India, 1950 â€" Article 14, 16(1), 136, 162
Bihar Pension Rules, 1950 â€" Rule 60(2)
Bihar Agricultural And Rural Area Development Agency Act, 1978 â€" Section 2(hh), 3, 4, 9, 10, 11, 11(1), 24, 31C, 38, 39, 39(c), 43
Evidence Act, 1872 â€" Section 83
Andhra Pradesh General Clauses Act, 1891 â€" Section 21
Commissions Of Inquiry Act, 1952 â€" Section 3(1)
United Provinces Municipalities Act, 1916 â€" Section 94, 131, 131(2), 131(3), 132, 133, 134, 134(2), 135, 135(2), 135(3)

Hon'ble Judges: Mohit Kumar Shah, J

Bench: Single Bench

Advocate: Vindhyachal Singh, Manoj Kumar Singh, Uday Pratap Singh, Anil Kumar Dwivedi, Harshvardhan Shivsundram, Harish Kumar

Final Decision: Dismissed

Judgement

1. The aforesaid two writ petitions have been heard together with consent of the parties since the issues to be adjudicated in the said cases are the

same, hence are being disposed off by the present common judgment.

2. The aforesaid two writ petitions have been filed seeking a direction upon the respondents to apply the pension scheme and grant pension and other

pensionary benefits in accordance with Bihar Pension Rules to the petitioners.

3. The petitioners of the first case have also prayed for quashing of the order contained in Memo No. 2621 dated 17.09.1983 issued by the Regional

Development Commissioner-cum-Chairman, Sone Command Area Development Agency, Patna, whereby and whereunder the concerned authorities

of the Agency have been directed to maintain the contributory provident fund accounts of the employees of the Sone Command Area Development

Agency.

4. The facts not in dispute are that the petitioners had been appointed on different posts in the year 1975 or thereafter with the Sone Command Area

Development Agency, which had subsequently stood merged with the Water and Land Management Institute (herein after referred to as the

WALMI"") in the month of September, 2018 and the said employees have also stood superannuated after attaining the age of 60 years. The

petitioners are stated to have been paid the contributory provident fund amount, the gratuity amount, group insurance amount and the amount of leave

encashment. The only grievance of the petitioners is that they are not being paid pension.

5. The learned counsel for the petitioners Shri Vindhyachal Singh has submitted that the second meeting of the Sone Command Area Development

Authority was held on 07.02.1974 at 10:00 A.M. in the office of the Commissioner, Patna Division, Patna and vide Agenda No. 4 it was decided that

as far as the service rules of the employees of the Sone Command Area Development Authority is concerned, the following rules shall be made

applicable:-

(i) Bihar Service Code

(ii) Bihar T.A. Rules

(iii) G.P. Fund Rules

(iv) Bihar Financial Rules

(v) Bihar Treasury Rules

(vi) Bihar Treasury Code

(vii) Pension Rules

6. The learned counsel for the petitioners has submitted that in the said meeting of Sone Command Area Development Authority, even the Chief

Secretary of the Government of Bihar and other important high up officials of the Government of Bihar were present. Thus the Sone Command Area

Development Authority had taken a conscious decision to make the provisions of the pension rules applicable to its employees, hence the petitioners

are entitled to grant of pension. The learned counsel for the petitioners has further submitted that the Chairman, Sone Command Area Development

Authority had also issued an order dated 22.06.1974 wherein it was stipulated that the following rules shall be applicable upon its employees:-

(i) Bihar Service Code

(ii) Bihar T.A. Rules

(iii) G.P. Fund Rules

(iv) Bihar Financial Rules

(v) Bihar Treasury Rules

(vi) Bihar Treasury Code

(vii) Pension Rules

7. The learned counsel for the petitioners has also submitted, by referring to the Bihar Agricultural and Rural Area Development Agency Act, 1978

(herein after referred to as the ""Act, 1978""), that vide Section 3 thereof, the State Government had constituted agencies for the integrated rural and

agricultural development of the command areas of irrigation project and/or such other areas as the State Government may, by notification in the

official gazette, specify. Consequently, Sone Command Area Development Agency, Gandak Command Area Developemnt Agency and Koshi

Command Area Development Agency were constituted.

8. The learned counsel for the petitioners has also referred to Section 38 & 39 of the aforesaid Act, 1978, which stipulates the Rule/Regulation making

power of the State Government and it also provides that the State Government may authorize framing of regulations regarding conditions of services

of the officers and servants of the agencies which shall be published in the official gazette and shall take effect from the date of such publication. It is

thus submitted that since no service regulations or rules have been framed till date, the aforesaid order issued by the Sone Command Area

Development Authority dated 22.06.1974, making the pension rules applicable to its employees, shall apply to the petitioners and accordingly, pension

is required to be paid to them. In this connection, the learned counsel for the petitioners has also referred to Section 43 of the aforesaid Act, 1978

which deals with ""repeal and savings"".

9. Per contra, the learned counsel appearing for the respondent WALMI has submitted by referring to the counter affidavit filed on behalf of the

respondent no. 5 that the Sone Command Area Development Authority and the other two authorities i.e. the Gandak Command Area Development

Authority and Koshi Command Area Development Authority were constituted by the State Government vide Resolution No. 2240 dated 20.10.1973

with effect from 01.11.1973. Thereafter, Bihar Agricultural and Rural Area Development Agency Ordinance, 1974 was promulgated whereunder the

aforesaid authorities were converted into independent agencies and Sone Command Area Development Agency was constituted as an independent

and separate agency. The aforesaid Ordnance, 1974 was then replaced by Bihar Agricultural and Rural Area Development Agency Act, 1978

(hereinafter referred to as the Ã¢â‚¬ËœBARADA Act, 1978Ã¢â‚¬â„¢) and under Section 3 thereof again constitution of three agencies were envisaged i.e.

Koshi Command Area Development Agency, Gandak Command Area Development Agency and the Sone Command Area Development Agency. In

fact after enactment of the aforesaid Ã¢â‚¬ËœBARADA Act, 1978Ã¢â‚¬â„¢ the aforesaid agencies which were constituted upon coming into force of the

BARADA Ordinance, 1974 got independent status of a body corporate under Section 31C of the BARADA Act, 1978 and the Board of Directors of

the agencies were empowered to take decision in the interest of the agencies and its employees. It is thus submitted by the learned counsel for the

respondent WALMI that the decision taken by the erstwhile Sone Command Area Development Authority or any other authority way back in the

year 1974 is not binding on the Sone Command Area Development Agency, hence the Bihar Pension Rules cannot be said to be applicable to the

employees of the Sone Command Area Development Agency, thus they are not entitled to be granted pension. The learned counsel for the respondent

WALMI has further submitted that the petitioners have already received the CPF amount, hence now they cannot resile from their conscious decision

to accept the CPF scheme. It has been further submitted that the Regional Development Commissioner-cum-Chairman of the Sone Command Area

Development Agency has also issued an order contained in Memo No. 2621 dated 17.09.1983 wherein instructions have been issued to the concerned

authorities of the Agency for maintaining the CPF account of the employees who have been directly appointed in the Agency and in accordance with

the said order, CPF account of all the employees, who had/have been directly appointed with the agency, were opened and are being maintained. It is

submitted that it is not in dispute that the petitioners have also been appointed in the Sone Command Area Development Agency and they were never

the employees of the Sone Command Area Development Authority. It is also submitted that the petitioners have upon their superannuation received

the CPF amount with admissible interest as also the amount of gratuity, group insurance and leave encashment. Lastly, the learned counsel for the

petitioners has also relied upon Rule 60(2) of the Bihar Pension Rules which specifically excludes the employees of grant-in-aid schools and

institutions from pension. It is also submitted that the expenditure of the Sone Command Area Development Agency is fully dependent on the grant-in-

aid given by the Government and till the date of the dissolution of the Sone Command Area Development Agency i.e. till 01.09.2018, it could never

generate its own source of income. The learned counsel has also relied upon a judgment passed by a coordinate Bench of this Court in CWJC No.

21105 of 2013 (Ramesh Prasad Singh & Ors. vs. The State of Bihar & Ors), passed on 24.03.2014, which has been upheld by the learned Division

Bench of this Court by a judgment dated 16.05.2016 passed in L.P.A. No. 11 of 2015 (Ramesh Prasad Singh & Ors. vs. The State of Bihar & Ors)

apart from relying on yet another judgment dated 20.05.2010 passed by a coordinate Bench of this Court in CWJC No. 9446 of 2009 & analogous

case (Jagdish Narain Sinha & Ors. vs. The State of Bihar & Ors). It is thus submitted that the present case is squarely covered by the aforesaid

Judgments, wherein it has also been held that till date no rules/regulations have been framed by the agency, hence the petitioners are not entitled to

pension.

10. The learned counsel appearing for the respondent-State Government has also adopted the arguments advanced by the learned counsel appearing

for the respondent no. 5. The learned counsel for the respondent-State, in order to buttress its arguments, has relied upon a judgment reported in

(2011) 1 PLJR 652 (Jagdish Narain Sinha and Anr. vs. The State of Bihar & Anr.) and has submitted that admittedly no service regulations have been

framed for the employees of the Sone Command Area Development Agency and moreover the aforesaid order dated 22.06.1974 issued by the Sone

Command Area Development Authority is not applicable to the employees of the Sone Command Area Development Agency. In this regard, it would

be relevant to reproduce paragraph nos. 2, 4 and 10 to 13 herein below:-

Ã¢â‚¬Å“2. Petitioners in the two writ applications are the employees of the Agency. They have filed the two writ applications praying inter alia to direct

the State respondents and its officers as also the Executive Committee of the Agency to enforce the service conditions in the matters of pay revision,

leave encashment, group insurance and payment of gratuity in terms of the Payment of Gratuity Act, 1972 as is applicable to the employees of the

State Government in the light of the decision of the Executive Committee of the Agency taken in its meeting held on 29.6.1999 vide agenda item No.

13 and notified under office order No. 985 dated 10.8.1999. Annexure-3. It is submitted on behalf of the petitioners that the State Government being

conscious of the fact that Bihar is a State which is primarily dependent on agriculture and in order to improve and enhance the agricultural production

it is necessary to modernize and develop the irrigation system to provide maximum irrigation facility to the lands falling within the span/command area

of the three rivers, namely, Koshi, Gandak, and Sone resolved to constitute the three command area development authority for the better management

of the three rivers under resolution of the State Government dated 20.10.1973. Perusal of the said notification indicates that Koshi Command Area

Development Authority was constituted for the district(s) of Purnia, Katihar, Saharsa. Gandak Area Development Authority for the district(s) of East

and West Champaran. Siwan, Saran, Gopalganj, Vaishali. Samastipur and Muzaffarpur and Sone Area Development Authority for the district(s) of

Rohtas, Bhojpur, Patna. Aurangabad and Gaya.

4. With reference to the provisions of the Act it is submitted by the Counsel for the petitioners that the three agency having been constituted under

section 3 of the Act are body corporate having perpetual succession and common seal with powers to acquire, hold, dispose of property and to

contract and it may sue or be sued in its own name and the Agency is discharging the responsibilities of the State as it is undertaking execution of the

scheme for securing integrated rural and agricultural development of the area by modernizing the irrigation and water drainage system so as to realize

the maximum potentiality of the river waters of the three rivers for the benefit of the integrated development of the area falling within the area of

operation of the three Agency.

10. The Counsel for the Agency accepted the position that Agency is discharging the welfare functions of the State as it is executing schemes for

augmenting agricultural production in the State by modernizing the irrigation system so as to enable the farmers, labourers and artisans living within the

area of operation of the Agency to improve their financial, social and other conditions. It is also submitted by the Agency that in appreciation of the

work and duties discharged by the employees of the agency the board of the Agency in its meeting held on 29.6.1999 vide agenda item no. 13

resolved to grant its employees the same service condition which is being given to the employees of the State Government and issued office order No.

985 dated 10.8.1999 Annexure-3 but in the light thereof as the budget proposal submitted by it is not being approved and released by the State

Government the agency is not in a position to grant the benefit of the 5th Pay Revision and the pay parity to its employees with that of the employees

of the State Government.

11. Having regard to the scheme of the Act and the express provisions thereof it is held that the Agency has been constituted under sections 3 and 4

of the Act to discharge the welfare function of the State by formulating plan/programme; scheme for the integrated rural and agricultural development

of the territory within the area of its operation as is envisaged under sections 9 and 10 of the Act. The Chairman and Managing Director as also the

other members of the Agency excluding the ex officio members hold office at the pleasure of the State Government. The Agency performs its

function with the assistance of the officers and employees appointed by the Agency on such emoluments and on such conditions of service as may be

laid down in the regulations. The Agency is empowered to frame regulation with the prior approval of the Government in the light of the provision

contained in section 39(c) of the Act but till date no regulation has been framed and the State Government has not accorded its approval to the

resolution of the Agency contained in office order dated 10.8.1999, Annexure-3. It is thus evident that having enacted the Act and constituted the

Agency the regulations providing for the service condition of the employees of the Agency has not been framed till date, notwithstanding the failure of

the Agency to frame regulations providing for the service conditions of its employees the Agency is functioning through its employees including the

petitioners herein appointed from time to time and the employees continue to suffer for want of service conditions and revision of pay. Accordingly, it

is directed that the Agency and the State Government should frame the regulations providing for the service conditions of the employees of the

Agency within three months from the date of receipt/production of a copy of this order before the Secretary, Water Resources Department and the

Chairman-cum-Managing Director of the Agency. While framing the service regulation the State Government and the Agency will keep in mind the

orders of the Division Bench dated 5.12.2008 passed in L.P.A. No. 778 of 2008 approving the extension of the age of superannuation of the

employees of the Agency from 58 to 60 years.

12. Having held as above relying on the observations of the Division Bench in the case of Bihar Rajya Khadi Gram Udyog Board Karyakarta Sangh

(supra) paragraph-13 it is observed that the Agency having been created by an Act of Legislature to discharge the welfare functions of the State

enumerated under sections 9 and 10 of the Act there is obligation on the part of the State to maintain the establishment of the Agency in the manner

best suited to achieve the objectives for which the Act has been enacted. The liability which the Agency is reasonably expected to incur in the normal

discharge of its functions enumerated under sections 9 and 10 of the Act the State is reasonably expected to provide while releasing grants to augment

the fund of the Agency under section 24 of the Act so as to enable the Agency to maintain its establishment to carry out its statutory functions which

is nothing but the welfare functions of the State i.e. the development of the farmers, labourers and the artisans residing within the area of operation of

the Agency. The Agency while discharging its statutory functions enshrined under sections 9 and 10 of the Act is not expected to generate its own

funds for meeting its liabilities. It is wholly dependent on the State for receipt of funds and in appreciation of such fact the State should provide the

Agency the fund which is reasonably required by the Agency for meeting its establishment expenditure so as to enable it to provide integrated

agricultural development in the area of its operation. Accordingly I direct the State to release adequate funds which is necessary for the Agency to

maintain its establishment for discharging the functions enumerated under sections 9 and 10 of the Act and other statutes including Payment of

Gratuity Act as the establishment of the Agency has not been exempted from making such payment, as early as possible, in any case within a

reasonable time not exceeding three months from the date of receipt/production of a certified copy of this order before the Secretary, Water

Resources Department.

13.The two writ applications are, accordingly, disposed of.Ã¢â‚¬â€‹

11. The learned counsel for the respondent-State has also submitted that the petitioners cannot be permitted to approbate and reprobate at the same

time, hence the petitioners can either fully rely upon the BARADA Act, 1978 or should not at all rely upon the same, thus, they cannot be permitted to

receive benefit and then submit that no rules Ã, governing their service conditions/pensionary benefits have been framed tillÃ, date. In this regard, the

learned counsel for the respondent-State has referred to a judgment reported in AIR 1993 SC 352 (R.N. Gosain vs. Yashpal Dhir), paragraph nos. 10

to 13 whereof are reproduced herein below:-

Ã¢â‚¬Å“10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no

party can accept and reject the same instrument and that Ã¢â‚¬Å“a person cannot say at one time that a transaction is valid and thereby obtain some

advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other

advantageÃ¢â‚¬â€. [See : Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd. [(1921) 2 KB 608, 612 (CA)] , Scrutton, L.J.]

According to Halsbury's Laws of England, 4th Edn., Vol. 16, Ã¢â‚¬Å“after taking an advantage under an order (for example for the payment of costs) a

party may be precluded from saying that it is invalid and asking to set it asideÃ¢â‚¬â€‹. (para 1508)

11. In Thacker Hariram Motiram v. Balkrishan Chatrabhu Thacker [1989 Supp (2) SCC 655] this Court was dealing with a similar situation. The High

Court, while deciding the second appeal in an eviction matter gave the appellant (tenant) one year's time subject to his giving an undertaking within a

period of three weeks stating that vacant possession would be handed over within the aforesaid time. The appellant gave an undertaking in

accordance with the said terms wherein he undertook that he would vacate and give vacant possession of the suit premises by December 31, 1985,

i.e., to say after one year if Ã¢â‚¬Å“by that time no stay order from the Supreme Court is received as I intend to file an appeal in the Supreme CourtÃ¢â‚¬â€. It

was held that in view of the said undertaking the petitioner could not invoke the jurisdiction of this Court under Article 136 of the Constitution and he

should abide by the terms of the undertaking, and it was observed: (pp. 655-56)

Ã¢â‚¬Å“This undertaking filed by the appellant in our opinion is in clear variation with the oral undertaking given to the learned Judge which induced him to

give one year's time. We do not wish to encourage this kind of practice for obtaining time from the court on one plea of filing the undertaking and

taking the different stand, in applications under Article 136 of the Constitution.Ã¢â‚¬â€‹

12. Similarly in Vidhi Shanker v. Heera Lal [1987 Supp SCC 200] and Ramchandra Jai Ram Randive v. Chandanmal Rupchand [1987 Supp SCC 254]

this Court declined to exercise its discretion under Article 136 of the Constitution in cases where the petitioner had given an undertaking in the High

Court and had obtained time to vacate the premises on the basis of such undertaking.

13. We are, therefore, of the opinion that the petitioner, having given an undertaking in pursuance to the directions given by the High Court in the

judgment dated March 6, 1992, and having availed the protection from eviction on the basis of the said undertaking, cannot be permitted to invoke the

jurisdiction of this Court under Article 136 of the Constitution and assail the said judgment of the High Court. In that view of the matter, we do not

consider it necessary to deal with the submissions urged by Dr Singhvi that the respondent, being an employee of the University at the time of his

retirement, was not a Ã¢â‚¬Ëœspecified landlordÃ¢â‚¬â„¢ under Section 2(hh) of the Act.Ã¢â‚¬â€‹

12. The learned counsel for the respondent-State has further submitted that the present writ petition is also marred by the principles of delay and

laches as also it is submitted that having enjoyed the benefits and having accepted the CPF amount after agreeing to get their contribution deducted

for the purposes of deposit in their CPF account to which matching contributions have also been deposited by the respondent agency and thereafter

having also received the entire CPF amount along with up to date interest, the petitioners cannot now at this juncture be permitted to resile from the

CPF scheme. In this connection, the learned counsel for the respondent-State has referred to a judgment reported in (2010) 2 SCC 59 (Union of India

& ors. vs. M.K. Sarkar & Ors.), paragraph nos. 9 to 11, 13, 20 to 22, 25 and 26 whereof are reproduced herein below:-

Ã¢â‚¬Å“9. When a scheme extending the benefit of option for switch over, stipulates that the benefit will be available only to those who exercise the option

within a specified time, the option should obviously be exercised within such time. The option scheme made it clear that no option could be exercised

after the last date. In this case, the respondent chose not to exercise the option and continued to remain under the Contributory Provident Fund

Scheme, and more importantly, received the entire PF amount on his retirement.

10. The fact that the respondent was the Head of his Department and all communications relating to the offer of the Eighth Option and the several

communications extending the validity period for exercising the option for pension scheme, were sent to the Heads of the Departments for being

circulated to all eligible employees/retired employees, is not in dispute. Therefore, the respondent who himself was the Head of his Department could

not feign ignorance of the Eighth Option or the extensions of the validity period of the Eighth Option.

11. In fact, as noticed above, in his application before the Tribunal the respondent refers to all the options. He is careful to say that he was not

Ã¢â‚¬Å“intimatedÃ¢â‚¬ about the contents of the last order relating to extension of the option, but does not say that he was unaware of the order extending

the benefit of option. The respondent consciously chose not to exercise the option as he admittedly thought that receiving a substantial amount in a

lump sum under the provident fund scheme (which enabled creation of a corpus for investment) was more advantageous than receiving small amounts

as monthly pension under the pension scheme. In those days (between 1957 when the pension scheme was introduced and 1976 when the respondent

retired) the benefits under the provident fund scheme and pension scheme were more or less equal; and there was a general impression among

employees that having regard to average life expectancy and avenues for investment of the lump sum PF amount, it was prudent to receive a large PF

amount on retirement rather than receive a small pension for a few years (particularly as there was a ceiling on the pension and as dearness

allowance was not included in the pay for computing the pension).

13. Having enjoyed the benefits and income from the provident fund amount for more than 22 years, the respondent could not seek switch over to

pension scheme which would result in the respondent getting in addition to the PF amount already received, a large amount as arrears of pension for

22 years (which will be much more than the provident fund amount that will have to be refunded in the event of switch over) and also monthly pension

for the rest of his life. If his request for such belated exercise of option is accepted, the effect would be to permit the respondent to secure the double

benefit of both provident fund scheme as also pension scheme, which is unjust and impermissible. The validity period of the option to switch over to

pension scheme expired on 31-12-1978 and there was no recurring or continuing cause of action. The respondent's representation dated 8-10-1998

seeking an option to shift to pension scheme with effect from 1976 ought to have been straightaway rejected as barred by limitation/delay and laches.

20. The decision in D.R.R. Sastri [(1997) 1 SCC 514 : 1997 SCC (L&S) 555] is of no assistance as it does not lay down any proposition that the last

date prescribed for exercising option is not relevant or that option could be exercised at any time, even if a last date had been stipulated for exercise of

the option. That case was decided on its peculiar facts as the employee (who was on deputation and who resigned from the service of Railways on

26-6-1973 when on deputation) was not made aware of the option to which he was entitled, even though there was a specific instruction that all

employees who had retired after 1-1-1973 should be informed about the option. The facts of this case are completely different. Here the employee

was in service of the Railways itself before and at the time of retirement. He was working as the Head of the Department and was receiving all

communications relating to option for being circulated to all employees in his department. Therefore, the question of respondent not being aware of the

option does not arise.

21. The Tribunal in this case has assumed that being Ã¢â‚¬Å“awareÃ¢â‚¬ of the scheme was not sufficient notice to a retiree to exercise the option and

individual written communication was mandatory. The Tribunal was of the view that as the Railways remained unrepresented and failed to prove by

positive evidence, that the respondent was informed of the availability of the option, it should be assumed that there was non-compliance with the

requirements relating to notice. The High Court has impliedly accepted and affirmed this view. The assumption is not sound.

22. The Tribunal was examining the issue with reference to a case where there was a delay of 22 years. A person, who is aware of the availability of

option, cannot contend that he was not served a written notice of the availability of the option after 22 years. In such a case, even if Railway

Administration was represented, it was not reasonable to expect the department to maintain the records of such intimation(s) of individual notice to

each employee after 22 years. In fact by the time the matter was considered more than nearly 27 years had elapsed. Further when notice or

knowledge of the availability of the option was clearly inferable, the employee cannot after a long time (in this case 22 years) be heard to contend that

in the absence of written intimation of the option, he is still entitled to exercise the option.

25. There is another angle to the issue. If someone has been wrongly extended a benefit, that cannot be cited as a precedent for claiming similar

benefit by others. This Court in a series of decisions has held that guarantee of equality before law under Article 14 is a positive concept and cannot

be enforced in a negative manner; and that if any illegality or irregularity is committed in favour of any individual or group of individuals, others cannot

invoke the jurisdiction of courts for perpetuating the same irregularity or illegality in their favour also on the reasoning that they have been denied the

benefits which have been illegally extended to others. (See Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745] , Gursharan Singh v. NDMC

[(1996) 2 SCC 459] , Faridabad CT Scan Centre v. D.G. Health Services [(1997) 7 SCC 752] , State of Haryana v. Ram Kumar Mann [(1997) 3

SCC 321 : 1997 SCC (L&S) 801] , State of Bihar v. Kameshwar Prasad Singh [(2000) 9 SCC 94 : 2000 SCC (L&S) 845] and Union of India v.

International Trading Co. [(2003) 5 SCC 437])

26. A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has

been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or

irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal

benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled,

he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can

challenge the benefit illegally granted to others. The fact that someone who may not be entitled to the relief has been given relief illegally, is not a

ground to grant relief to a person who is not entitled to the relief.Ã¢â‚¬â€‹

Thus, the learned counsel for the respondent-State has submitted that since the petitioners have already availed the benefits of CPF scheme, now they

are estopped from resiling from the said scheme.

13. In reply, the learned counsel for the petitioners has submitted that since no service regulations have been framed by the respondent authorities for

its employees under Section 39 of the BARADA Act, 1978, the decision taken by the Sone Command Area Development Authority, issued vide the

aforesaid order dated 22.06.1974 regarding applicability of the Bihar Pension Rules would be applicable to the employees of the respondent Sone

Command Area Development agency, hence the petitioners are entitled to payment of pension. It is also submitted that admittedly the Bihar

Agricultural and Rural Area Development Agency Service Conditions, Discipline & Appeal Rules, 2010, issued by the Water Resources Department

and published in the gazette on 14th July, 2011, pertains to Gandak Command Area Development Agency, hence the provisions thereof are not

applicable to the employees of the Sone Command Area Development Agency. The learned counsel for the petitioners has further submitted that any

action taken against the rules is nullity in the eyes of law. In this regard, a judgment reported in AIR 1991 SC 295 (H.C. Puttaswamy & Ors. vs. Chief

Justice of Karnataka High Court), has been referred to, paragraph nos. 9 & 10 whereof are being reproduced herein below:-

Ã¢â‚¬Å“9. This is the undisputed procedure for recruitment prescribed by the Rules. The then Chief Justice, however, disregarded the authority of the

Public Service Commission to make selection and by-passed the power of the District Judge to make appointment. He took upon himself the power of

both the authorities of making selection as well as appointment in the establishments of the subordinate courts. Out of a large number of candidates

who have applied in response to the Notification dated May 29, 1978 he called some candidates for interview at frequent intervals and appointed them

in the High Court. At the beginning except on one or two occasions the number of candidates called for interview seem to be more than the

candidates selected, but later on, only a few candidates were called for interview and they were all appointed on the same day. Most of them were

immediately transferred to subordinate courts. In some cases, it is said that in the forenoon the candidates were appointed and taken on duty in the

High Court; in the afternoon they were transferred and placed at the disposal of a District Judge for taking them on duty. In most of the cases the

candidates seem to have reported before the concerned District Judge on the very next day. This cycle of appointment and transfer went on during

the years 1980 to 1982 as against the advertisement of the year 1978. The total number of persons thus appointed came to ten times the number of

posts advertised. They could not be retained in the High Court since the High Court apparently did not have so many vacancies. Their appointment in

substance and effect was intended for the subordinate courts and accordingly most of them were transferred to subordinate courts circumventing the

statutory provisions for such recruitment.

10. While the administration of the courts has perhaps never been without its critics, the method of recruitment followed by the Chief Justice appears

to be without parallel. The learned Judges of the High Court have in a considered judgment allowed the writ petitions and quashed all those

appointments. They have expressed the view that the appointments made by the Chief Justice were very serious violation of statutory law and

constitutional protection of equality of opportunity guaranteed to the candidates under Articles 14 and 16(1). From the foregoing narration of events

and by the rules of recruitment, it seems to us that there cannot be two opinions on the conclusion reached by learned Judges. The methodology

adopted by the Chief Justice was manifestly wrong and it was doubtless deviation from the course of law which the High Court has to protect and

preserve.Ã¢â‚¬â€‹

14. The learned counsel for the petitioners has further submitted that it is a well settled principal of law that when the statute provides that a particular

act is to be done in a particular manner, then it has to be done in that particular manner and in no other manner. In this connection, the learned counsel

for the petitioners has referred to a judgment rendered by the HonÃ¢â‚¬â„¢ble Apex Court, reported in (2014) 3 SCC 502 (Dipak Babaria vs. State of

Gujarat & Ors.), paragraph nos. 61 & 72 whereof are reproduced herein below:-

Ã¢â‚¬Å“61. It is well settled that where the statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no

other manner. This proposition of law laid down in Taylor v. Taylor [(1875) LR 1 Ch D 426 at p. 431.] was first adopted by the Judicial Committee in

Nazir Ahmad v. King Emperor [(1935-36) 63 IA 372 : (1936) 44 LW 583 : AIR 1936 PC 253] and then followed by a Bench of three Judges of this

Court in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh [AIR 1954 SC 322 : 1954 Cri LJ 910] . This proposition was further explained in para 8

of State of U.P. v. Singhara Singh [AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2)] by a Bench of three Judges in the following words: (AIR p. 361)

Ã¢â‚¬Å“8. The rule adopted in Taylor v. Taylor [(1875) LR 1 Ch D 426 at p. 431.] is well recognised and is founded on sound principle. Its result is that if

a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing

of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision

might as well not have been enacted.Ã¢â‚¬â€‹

This proposition has been later on reiterated in Chandra Kishore Jha v. Mahavir Prasad [(1999) 8 SCC 266] , Dhanajaya Reddy v. State of Karnataka

[(2001) 4 SCC 9 : 2001 SCC (Cri) 652] and Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd. [(2008) 4 SCC 755]

72. In our view, considering the scheme of the Act, the process of industrialisation must take place in accordance therewith. As stated earlier if the

law requires that a particular thing should be done in a particular manner it must be done in that way and none other. The State cannot ignore the

policy intent and the procedure contemplated by the statute. In the instant case, the State could have acquired the land, and then either by auction or

by considering the merit of the proposal of Respondent 5 allotted it to Respondent 5. Assuming that the application of Respondent 5 was for a bona

fide purpose, the same had to be examined by the Industries Commissioner, to begin with, and thereafter it should have gone to the Collector. After

the property vests in the Government, even if there were other bidders to the property, the Collector could have considered the merits and the bona

fides of the application of Respondent 5, and nothing would have prevented him from following the course which is permissible under the law. It is not

merely the end but the means which are of equal importance, particularly if they are enshrined in the legislative scheme. The minimum that was

required was an enquiry at the level of the Collector who is the statutory authority. Dictating him to act in a particular manner on the assumption by

the Minister that it is in the interest of the industrial development would lead to a breach of the mandate of the statute framed by the legislature. The

Ministers are not expected to act in this manner and therefore, this particular route through the corridors of the Ministry, contrary to the statute, cannot

be approved. The present case is clearly one of dereliction of his duties by the Collector and dictation by the Minister, showing nothing but arrogance

of power.Ã¢â‚¬â€‹

15. Lastly, the learned counsel for the petitioners has submitted that since the respondents have acted against the acts/ statutes, no estopple will

operate against the petitioners and against the statutes. Thus it is the contention of the Ld. Counsel for the petitioners that since the respondents have

unilaterally converted the pension scheme, applicable to the petitioners, from GPF scheme to CPF scheme, against the provisions and the statutes, the

respondents cannot claim that the claim of the petitioners is barred by principle of estopple. In this connection, the learned counsel for the petitioners

has referred to a judgment rendered by the HonÃ¢â‚¬â„¢ble Apex Court, reported in (1996) 6 SCC 634 (I.T.C. Bhadrachalam Paperboards & Anr. vs.

Mandal Revenue Officer, A.P. & Ors.), paragraph nos. 12, 13, 18 and 30 whereof are reproduced herein below:-

Ã¢â‚¬Å“12. On the other hand, Shri Ram Kumar, learned counsel for the State of Andhra Pradesh, urged the following submissions in support of the

judgment under appeal: GOMs No. 201 is not valid or enforceable since it was not published in the Gazette nor was it laid before the legislature as

required by Section 11. The requirement of publication in the Gazette is mandatory and not directory. The power of exemption is not a species of

delegated legislation; it is an instance of conditional legislation. The power under Section 11 can be exercised only in the manner and in accordance

with the requirements of Section 11 and in no other manner. It does not take effect and become enforceable until and unless it is published in the

manner prescribed, i.e., in the Gazette. The power of exemption should be strictly construed. The order which is not in conformity with the

requirements of Section 11 cannot be treated as an order thereunder, nor can it give rise to or form a foundation for the pleas of promissory/equitable

estoppel or to legitimate expectations. It is already held by this Court that no exemption notification is effective until and unless it is published in the

Gazette as required by the Act. Public interest demands strict compliance with the said requirement. Moreover, GOMs No. 386 has been validly

issued and the retrospective effect given to it on and from 17-12-1976 is equally valid. It means that GOMs No. 386 must be deemed to have been

issued on 17-12-1976; it is admittedly a statutory GO. If so, there cannot be another non-statutory GO on the same subject inconsistent with the terms

of the statutory GO covering the same period. For this reason too, GOMs No. 201 is neither effective nor enforceable.

13. The first question we have to answer is whether the publication of the exemption notification in the Andhra Pradesh Gazette, as required by

Section 11(1) of the Act, is mandatory or merely directory? Section 11(1) requires that an order made thereunder should be (i) published in the Andhra

Pradesh Gazette and (ii) must set out the grounds for granting the exemption. The exemption may be on a permanent basis or for a specified period

and shall be subject to such restrictions or conditions as the Government may deem necessary. Shri Sorabjee's contention is that while the

requirements that the power under Section 11 should be expressed through an order, that it must contain the grounds for granting exemption and that

the order should specify whether the exemption is on a permanent basis or for a specified period are mandatory, the requirement of publication in the

Gazette is not. According to the learned counsel, the said requirement is merely directory. It is enough, says the counsel, if due publicity is given to the

order. He relies upon certain decisions to which we shall presently refer. We find it difficult to agree. The power under Section 11 is in the nature of

conditional legislation, as would be explained later. The object of publication in the Gazette is not merely to give information to public. Official Gazette,

as the very name indicates, is an official document. It is published under the authority of the Government. Publication of an order or rule in the Gazette

is the official confirmation of the making of such an order or rule. The version as printed in the Gazette is final. The same order or rule may also be

published in the newspapers or may be broadcast by radio or television. If a question arises when was a particular order or rule made, it is the date of

Gazette publication that is relevant and not the date of publication in a newspaper or in the media (See Pankaj Jain Agencies v. Union of India [(1994)

5 SCC 198]). In other words, the publication of an order or rule is the official irrefutable affirmation that a particular order or rule is made, is made on

a particular day (where the order or rule takes effect from the date of its publication) and is made by a particular authority; it is also the official

version of the order or rule. It is a common practice in courts to refer to the Gazette whenever there is a doubt about the language of, or punctuation

in, an Act, Rule or Order. Section 83 of the Evidence Act, 1872 says that the court shall presume the genuineness of the Gazette. Court will take

judicial notice of what is published therein, unlike the publication in a newspaper, which has to be proved as a fact as provided in the Evidence Act. If

a dispute arises with respect to the precise language or contents of a rule or order, and if such rule or order is not published in the Official Gazette, it

would become necessary to refer to the original itself, involving a good amount of inconvenience, delay and unnecessary controversies. It is for this

reason that very often enactments provide that Rules and/or Regulations and certain type of orders made thereunder shall be published in the Official

Gazette. To call such a requirement as a dispensable one Ã¢â‚¬" directory requirement Ã¢â‚¬" is, in our opinion, unacceptable. Section 21 of the Andhra

Pradesh General Clauses Act says that even where an Act or Rule provides merely for publication but does not say expressly that it shall be published

in the Official Gazette, it would be deemed to have been duly made if it is published in the Official Gazette [Section 21 reads:Ã¢â‚¬Å“21. Publication of

Orders and Notifications in the Official Gazette.Ã¢â‚¬"Where in any Act or in any rule passed under any Act, it is directed that any order, notification or

other matter shall be notified or published, that notification or publication shall, unless the Act otherwise provides, be deemed to be duly made if it is

published in the Official Gazette.Ã¢â‚¬] . As observed by Khanna, J., speaking for himself and Shelat, J. in Sammbhu Nath Jha v. Kedar Prasad Sinha

[(1972) 1 SCC 573 : 1972 SCC (Cri) 337] the requirement of publication in the Gazette (SCC p. 578, para 17) Ã¢â‚¬Å“is an imperative requirement and

cannot be dispensed withÃ¢â‚¬. The learned Judge was dealing with Section 3(1) of the Commissions of Inquiry Act, 1952 which provides inter alia that a

Commission of Inquiry shall be appointed Ã¢â‚¬Å“by notification in the Official GazetteÃ¢â‚¬. The learned Judge held that the said requirement is mandatory

and cannot be dispensed with. The learned Judge further observed: (SCC p. 578, para 17)

Ã¢â‚¬Å“The commission of inquiry is appointed for the purpose of making an inquiry into some matter of public importance. The schedule containing the

various allegations in the present case was a part of the notification, dated 12-3-1968 and specified definite matters of public importance which were

to be inquired into by the Commission. As such, the publication of the schedule in the Official Gazette should be held to be in compliance with the

statutory requirement. The object of publication in an Official Gazette is twofold: to give publicity to the notification and further to provide authenticity

to the contents of that notification in case some dispute arises with regard to the contents.Ã¢â‚¬â€‹

18. The next decision relied upon is in Municipal Board v. Prayag Narain Saigal & Firm Moosaram Bhagwan Das [(1969) 1 SCC 399 : (1969) 3 SCR

387] . The United Provinces Municipalities Act, 1916 (2 of 1916) prescribes the procedure for levy of water tax in Sections 131 to 135. Now, what

happened in that case is: the Municipal Board prepared a draft of the rules proposing to levy tax as required by Section 131(2) and published it in the

manner prescribed by Section 131(3) read with Section 94. To wit, the draft rules were published in Rashtra Sandesh, a local newspaper published in

Hindi. Objections were received and were duly considered by the Board. The Board decided to modify the original proposals by reducing the rate of

tax. Though the modified proposals were also required to be published just like the original proposals, they were not so published as a fact. After

receiving the sanction of the appropriate authority, the Board passed a special resolution on 23-4-1957 as contemplated by Section 134(2) of the Act

directing that the imposition of the tax shall take effect from 1-10-1957. This special resolution was not published in the manner prescribed by Section

94. Be that as it may, on receipt of the special resolution, the prescribed authority, acting under Section 135(2), notified in the Official Gazette dated 3-

8-1957 that the tax imposed shall take effect from the appointed day. Sub-section (3) of Section 135 provides that:

Ã¢â‚¬Å“A notification of the imposition of a tax under sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the

provisions of this Act.Ã¢â‚¬â€‹

Three objections were raised by the rate-payers to the levy of water tax, viz., (a) omission to publish the preliminary proposal in the manner prescribed

by Section 131(3) read with Section 94, (b) non-publication of the modified proposal in accordance with Section 132(2) and (c) non-publication of the

special resolution directing the imposition of tax in accordance with Section 94. All the three objections were negatived by a three-Judge Bench of this

Court. With respect to the first objection, it was held that though the publication was not in the prescribed form, yet the omission was a mere

irregularity and since the object of publication under Section 131(3) is to inform the inhabitants of the proposal and to enable them to file objection, that

object was achieved by publication in the local daily Rashtra Sandesh. With respect to the second objection, it was held that since the local inhabitants

did have the notice of the proposal and did indeed submit their objections, no prejudice is caused by not inviting fresh objections to the modified

proposals. The Court also pointed out that the modified proposals raised the exemption limit and reduced the rate of tax and was thus in no way

prejudicial to the inhabitants. With respect to the third objection, the Court observed that the special resolution did not require to be published in

accordance with Section 94. Even if it is assumed that it required to be so published, the Court held, the non-publication was a mere irregularity for the

reason that the inhabitants had no right to file any objections to the special resolution. The Court also observed that the inhabitants had clear notice of

the imposition of the tax from the notification published in the Official Gazette on 3-8-1957 and that the defect of non-publication of special resolution

in the manner prescribed by Section 94 was cured by sub-section (3) of Section 135. It would be noticed immediately that the objection of non-

publication pertained to the proposals and modified proposals to levy taxes and that requirement was held to be not mandatory. So far as the special

resolution is concerned, the Court held that it did not require to be published in the manner prescribed by Section 94. Even if it is required to be

published, the Court held, the said defect of non-publication was cured by sub-section (3) of Section 135 which provided that:

Ã¢â‚¬Å“A notification of the imposition of a tax under sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the

provisions of this Act.Ã¢â‚¬â€‹

This decision too does not say that where a notification levying tax is required by the Act to be published in the Official Gazette, the non-publication of

the Official Gazette does not vitiate the levy. The decision thus turned upon the particular facts of that case and the particular provisions therein

concerned.

30. Shri Sorabjee next contended that even if it is held that the publication in the Gazette is mandatory yet GOMs No. 201 can be treated as a

representation and a promise and inasmuch as the appellant had acted upon such representation to his detriment, the Government should not be

allowed to go back upon such representation. It is submitted that by allowing the Government to go back on such representation, the appellant will be

prejudiced. The learned counsel alsoÃ, contended that where the Government makes a representation, acting within the scope of its ostensible

authority, and if another person acts upon such representation, the Government must be held to be bound by such representation and that any defect in

procedure or irregularity can be waived so as to render valid which would otherwise be invalid. The counsel further submitted that allowing the

Government to go back upon its promise contained in GOMs No. 201 would virtually amount to allowing it to commit a legal fraud. For a proper

appreciation of this contention, it is necessary to keep in mind the distinction between an administrative act and an act done under a statute. If the

statute requires that a particular act should be done in a particular manner and if it is found, as we have found hereinbefore, that the act done by the

Government is invalid and ineffective for non-compliance with the mandatory requirements of law, it would be rather curious if it is held that

notwithstanding such non-compliance, it yet constitutes a Ã¢â‚¬Ëœpromiseâ€™ or a Ã¢â‚¬Ëœrepresentationâ€™ for the purpose of invoking the rule of

promissory/equitable estoppel. Accepting such a plea would amount to nullifying the mandatory requirements of law besides providing a licence to the

Government or other body to act ignoring the binding provisions of law. Such a course would render the mandatory provisions of the enactment

meaningless and superfluous. Where the field is occupied by an enactment, the executive has to act in accordance therewith, particularly where the

provisions are mandatory in nature. There is no room for any administrative action or for doing the thing ordained by the statute otherwise than in

accordance therewith. Where, of course, the matter is not governed by a law made by a competent legislature, the executive can act in its executive

capacity since the executive power of the State extends to matters with respect to which the legislature of a State has the power to make laws

(Article 162 of the Constitution). The proposition urged by the learned counsel for the appellant falls foul of our constitutional scheme and public

interest. It would virtually mean that the rule of promissory estoppel can be pleaded to defeat the provisions of law whereas the said rule, it is well

settled, is not available against a statutory provision. The sanctity of law and the sanctity of the mandatory requirement of the law cannot be allowed

to be defeated by resort to rules of estoppel. None of the decisions cited by the learned counsel say that where an act is done in violation of a

mandatory provision of a statute, such act can still be made a foundation for invoking the rule of promissory/equitable estoppel. Moreover, when the

Government acts outside its authority, as in this case, it is difficult to say that it is acting within its ostensible authority. If so, it is also not permissible to

invoke the principle enunciated by the court of appeal in Wells v. Minister of Housing & Local Govt. [(1967) 2 All ER 1041 : (1967) 1 WLR 1000]Ã¢â‚¬‹

16. I have heard the learned counsel for the parties and perused the materials on record as also the various judgments/authorities cited and relied upon

by the learned counsel for the parties.

17. At the outset, it would be relevant to refer to the various provisions of the ordinance/act/regulations, referred to herein above, by the learned

counsel for the parties, which are being reproduced herein below:-

I. Bihar Agricultural and Rural Area Development Agency Act, 1978:-

Ã¢â‚¬Å“3. Constitution of the Agency.-

(1) The State Government may at any time after the commencement of this Act constitute an Agency or Agencies for the integrated rural and

agricultural development of the command area of any irrigation project and/or such other area as the State Government may, by notification in the

Official Gazette, specify :Provided that the State Government may, by notification in the Official Gazette include at any subsequent stage, any area

within the Agency so declared; or exclude any area from any such Agency or transfer any area from one Agency to another.

(2) The name and composition of any such Agency constituted under sub-section (1) shall be specified in the notification.

(3) The Agency shall be a body corporate having perpetual succession and a common seal, with powers, subject to the provision of this Act to acquire,

hold, dispose of property and to contract, and it may sue or be sued by its own name and title.

(4) The headquarters of the Agency shall be situated at such place in the area of Agency as the Agency may by notification in the Official Gazette,

specify.

38. Power to make rule. -

(1) The State Government may, by notification in the Official Gazette make rules not inconsistent with this Act for carrying out all or any of the

purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the following matters, namely:-

(i) the honoraria and allowances to be paid to the members of the Board or the Executive Committee;

(ii) the manner in which meetings of the Board and the Executive Committee shall be held:

(iii) the forms of the budget, the annual report and the annual financial statement shall be made available to the State Government;

(iv) the procedure and conditions for the grant of loans and recovery of the dues of the Agency

(v)Ã, theÃ, dutiesÃ, andÃ, powerÃ, ofÃ, theÃ, Managing Director.

(3) Every rule made under the section shall be laid as soon as may be after it is made, before each House of the State Legislature while it is in session

for a total period of not less than fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the

session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or both Houses agree that

the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be, so however that

any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

39. Power to make regulations. -

(1) The Board may, with the previous approval of the State Government make regulations not inconsistent with the provisions of this Act or the rules

made thereunder, for carrying out its functions under this Act.

(2) In particular, and without prejudice to the generally of the foregoing power, such regulations may provide for all or any of the following matters,

namely:-

(a) procedure for conduct of business at the meetings of the Board and the Executive Committee;

(b) functions, powers and duties of officers and servants of the Agency;

(c) appointments, promotions and conditions of services of officers and servants of the Agency;

(d) manner in which charges, rates, dues, etc. shall be fixed and recovered;

(e) punishments for breach of any regulations;

(f) manner of preparation and publication of plans, programmes, etc.

(3) Such regulations shall be published in the Official Gazette and the regulations shall have effect from the date of such publication.

(4) The provision of sub-section (3) of section 38 shall apply to all such regulations made by the Board.

43. Repeal and Saving. -

(1) The Bihar Agricultural and Rural Area Development Agency Second Ordinance, 1978 (Bihar Ordinance no. 101 of 1978) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken in exercise of any power conferred by or under the said Ordinance shall be

deemed to have been done or taken in exercise of powers conferred by or under this Act as if this Act were in force on the day on which such thing

or action was done or taken.Ã¢â‚¬‹

II. Bihar Pension Rules, 1950:-

Ã¢â‚¬Å“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 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.Ã¢â‚¬‹

18. The admitted facts which emerge from the pleadings and the arguments advanced by the learned counsel for the parties are that the State

Government had initially constituted three command area development authorities i.e. Koshi, Gandak and Sone command Area Development

Authorities vide Resolution dated 20.10.1973 and that is why the aforesaid three Command Area Development Authorities were established in the

year 1973. Thereafter, the Bihar Agricultural and Rural Area Development Agencies Ordinance, 1974 was promulgated and under Section 3 thereof

three agencies, in place of the aforesaid three authorities, were established i.e. Koshi, Gandak and Sone Command Area Development Agencies by

virtue of Section 3 of the said Ordinance, 1974, however, subsequently, the said Ordinance, 1974 was replaced by the Bihar Agricultural and Rural

Area Development Agency Act, 1978. It is also an admitted fact that no rules/regulations pertaining to the service conditions of the employees of the

respondent Sone Command Area Development Agency/ Water and Land Management Institute (WALMI), have either been framed or published in

the official gazette. This Court further finds that admittedly the petitioners have joined the services of the Sone Command Area Development Agency

only after its creation by coming into force of the BARADA Ordinance, 1974, hence it is clear that the petitioners are not the employees of the Sone

Command Area Development Authority, hence this Court holds that the order issued by the Chairman, Sone Command Area Development Authority,

Patna dated 22.06.1974 is not applicable to the case of the petitioners. As far as the Repeal and Saving clause i.e. Section 43 of the BARADA Act,

1978 is concerned, the same seeks to save the action done or taken in exercise of the powers conferred by the BARADA Ordinance, 1974, which

has been repealed by the said BARADA Act, 1978, thus Section 43 of the Act, 1978 is of no help to the petitioners. This Court also finds that under

Section 60(2) of the Bihar Pension Rules, 1950, the employees of grant-in-aid schools and institutions are excluded from pension and since admittedly

the Sone Command Area Development Agency is not having its own income and is fully dependent on the grant-in-aid given by the State Government,

the employees of the Sone Command Area Development Agency including the petitioners herein are consequently not entitled to grant of pension.

Thus, it is to be seen as to what benefits, the petitioners/ employees of the Sone Command Area Development Agency, would be entitled to in

absence of their entitlement to grant of pension. In this regard, it is not disputed by the parties that the CPF accounts of the petitioners were opened,

deductions by way of contribution were made from their salary and the Sone Command Area Development Agency had also deposited matching

contribution in the CPF account of the petitioners and after superannuation all the petitioners have without any protest received the CPF amount along

with due interest as also the amount of gratuity, group insurance and leave encashment. Thus, after having accepted the CPF scheme and in absence

of there being any rules/regulations, framed under Sections 38 and 39 of the Act, 1978 as also the petitioners having admittedly received the entire

CPF amount along with the due interest without any demur or protest, upon their retirement, they cannot be permitted to retract now at this belated

stage. This aspect of the matter stands squarely covered by the judgment rendered by the HonÃ¢â‚¬â„¢ble Apex Court in the case of M.K. Sarkar

(supra).

19. This Court further finds that since the petitioners are admittedly employees of the Sone Command Area Development Agency, inasmuch as they

have been appointed only after constitution of the Sone Command Area Development Agency in the year 1974, as aforesaid, any decision/order/

scheme of the Sone Command Area Development Authority would definitely be not applicable to the petitioners. At this juncture it would also be

relevant to refer to the Bihar Contributory Provident Fund Rules, 1948, which postulates applicability of the Bihar Contributory Provident Fund Rules,

1948, to every non-pensionable service of the servant of the Government. Thus, it cannot be said that there is no basis for the petitioners having been

taken in the fold of the CPF scheme by the authorities of Sone Command Area Development Agency.

20. Consequently, the judgments relied upon by the learned counsel for the petitioners in the case of H.C. Puttaswamy and Ors. (supra), Dipak

Babaria & others (supra) and in the case of I.T.C. Bhadrachalam Paperboards & Anr. (supra) are not applicable in the facts and circumstances of

the present case.

21. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above in the preceding paragraphs, this Court finds

that the petitioners are not entitled to grant of pension, hence the present writ petitions stand dismissed being devoid of any merit.