

Anil Kumar Sinha Vs State of Jharkhand And Ors

Court: Jharkhand High Court

Date of Decision: Dec. 18, 2018

Hon'ble Judges: Aniruddha Bose, CJ; Aparesh Kumar Singh, J

Bench: Division Bench

Advocate: Saurav Arun, Prashant Kr. Singh

Final Decision: Disposed Off

Judgement

Aniruddha Bose, CJ.

The appellant has approached us with this appeal after his plea for direction on the State for clearing his monthly pension and payment of arrears of

50% of 6th Pay Revision Committee was rejected by the learned First Court. The learned First Court, however, quashed an order for recovery of a

sum of Rs. 6,04,2018/- made against him. The appellant was originally appointed in the Bihar State Sugar Corporation Limited, Patna in the year 1977.

He was posted at Katkamsandi, Hazaribagh in the post of clerk in the Department of Social Welfare, on deputation in the year 1997. In this

proceeding, the appellant in substance wants his posting to be treated as confirmed service in the Government of Jharkhand. The appellant's case

before the Learned First Court was that his posting in the State Government's Social Welfare Department was made after interview and on

approval of the cabinet. The order of posting was issued by the Department of Welfare, a copy of which has been made as Annexure-1 to the writ

petition, which forms part of the memorandum of appeal as well. The appellant was subsequently transferred to Hunterganj (Chatra). The posting, as

it appears from this memorandum dated 21st March, 1997 bearing No. 251, was in World Bank sponsored I.C.D.S-II, Project Management Cell. The

text of the relevant portion of his posting order along with its english version reads:-

"dY;k.k foHkkx

fo'o cSad IEiksf"kr vkbZ-lh-Mh-,l-&11] ifj;kstuk izcU/ku

dkkx] bfUnjk Hkou ,11&eafy,1/2] jkepfj= flag iFk] iVuk&1

51@21-3-97

must join at the place of his posting by 13.04.97 failing which his deputation shall be deemed to be cancelled. Any type of travelling allowance shall not

be admissible for joining at the place of posting.

4)As per requirement, the work of Assistant can also be assigned to the employee of Typist post.

5)As per requirement, the work of Night Guard can also be assigned to the employee of Peon post.

6)In the event of services rendered not being found satisfactory, the deputation shall be terminated.

7)This deputation can be terminated at any time. (translated version) The appellant's name appears against Serial No. 17 of this instrument

under the heading "Description-1"

2. The appellant was relieved from the Corporation by an order issued by the Administrative Head of that Corporation on 7th April, 1997. The copy of

the said order along with its english version reads:-

"

fo'o cSad IEiksf""kr vkbZ-lh-Mh-,l-&11] ifj;kstuk izcU/ku dks""kkax] dY;k.k foHkkx] fcgkj ljdkj ds

vkns'k la;k 251 fnukad 21-3-97 ds vkyksd esa fuxe ds fuEukafr deZpkfj;ksa dks mijksDr vkns'k

esa vafdr 'kRrksZa ds vk/kkj ij izfrfu;qDr gsrq inLFkkfir LFkku ij ;ksxnku nsus ds fy, fnukad 8-4-

97 ds vijkgu~ Is fojfer fd;k tkrk gS%&

1- Jh yyu dqekj nkl] fyfid] vfHk;a=k 'kk[kk

2- ^ tus'oj ;kno] Vadd] lkekU; 'kk[kk

3- ^ ----- >k] fyfid] dz; ,oa ----- 'kk[kk

4- ^ vfuy dqekj flUgk] fyfid] LFkkiuk 'kk[kk

2- mijksDr deZpkfj;ksa dks vkoafVr dk;ksZa dk fu"iknu 'kk[kk ds miyC/k vU; deZpkfj;ksa ls

dj;k tk;sxA Jh tus'oj ;kno] Vadd ds LFkku ij Jh Jhdkar izlkn JhokLro] Vadd dks lfpo ds lkFk lac) fd;k tkrk gSA

3- lacaf/kr deZpkjh fojfer vof/k ds iwoZ vius lafpaKvksa ,oa vfHkys[kksa dk izHkkj foHkkxh;

iz/kku ds funs'kuqlkj lacaf/kr deZpkjh dks fuf'pr :i ls lkSai nsaxsA

4- lacaf/kr deZpkfj;ksa dks dY;k.k foHkkx esa ;ksxnku nsus gsrq fuxe dk;kZy; ls dksbZ ;k=k

HkRrk ns; ugha gksxA

5- vafre osru izek.k i= ;ksxnku ds i'pkr~ fuxZr fd;k tk;sxA" (translated version) Pursuant to Order No. 251 dated 21.3.1997 of the World Bank sponsored I.C.D.S.II, Project Management Cell, Welfare Department, Bihar

Government, the following employees of the Corporation are being relieved with effect from afternoon of 8.4.97 for joining at the place of posting on

deputation basis with conditions mentioned in the aforesaid order:-1.Sri Lalan Kumar Das, Clerk, Engineering Section.

2.Sri Janeswhar Yadav, Typist, General Section.

3.Sri Santosh Jha, Clerk, Purchasing and Store Section.

4.Sri Anil Kumar Sinha, Clerk, Establishment Section.

2.The works assigned to the aforesaid employees shall be completed by the other available employees of the Section.
Sri Srikant Prasad Srivastava,

Typist, is attached with the Secretary in place of Sri Janeshwar Yadav, Typist.

3.The concerned employee, prior to his relieving from duty, must hand over the charge of his files and records to the concerned employee as per

direction of the Departmental Head.

4.No travelling allowance from the Corporation shall be admissible to the concerned employees for joining in the Welfare Department.

5.The Last Payment Certificates shall be issued after joining.Ã¢â€ (translated version)

3. Admitted position is that the appellant continued in the post to which he was sent on deputation till he reached his age of superannuation on 30th

September, 2010. Prior to that, on 29th June, 2004, memorandum bearing No. 1263 dated 29th June, 2004 was issued by the Director, Social Welfare,

Government of Jharkhand, Ranchi. The appellantÃ¢â€s claim is that by this memorandum, he, along with several other similarly situated employees

were absorbed in the Department of Social Welfare, Woman & Child Development (Director of Social Welfare) Government of Jharkhand and they

had become employee of the State Government. The substantive content of the memorandum is reproduced below along with its english translation:-

Ã¢â€>kj[M ljdkj

lekt dY;k.k] efgyk ,oa cky fodkl foHkkx

Ã¢¼lekt dY;k.k funks'kky;Ã¢½

vkns'k

Hkkjr ljdkj efgyk ,oa cky fodkl foHkkx ds i=kad 13@2002 fnukad 28-8-03 }kjk lalwfr u;s LVkfiar iSVuZ ds vuqkj deZpkfj;ksa ds lkeatL; gsrq

fnukad 17-6-04 dks lekt dY;k.k funks'kky; esa vkgwr LFkkiuk lfejr dh cSBd ds vuq'kalk ds vkyksd esa ftyk izksxzke inkf/kdkjh ,oa cky fodkl ifj;kstuk

ds vUrxZr dk;Zjr fuEuifj[kr deZpkfj;ksa dks fuEu:i ls lek;ksftr fd;k tkrk gSAÃ¢â€

Ã¢â€According to new staffing pattern communicated vide Letter No. 13/2002, dated 28.8.03 of the Government of India, Department of Women and

Child Development and pursuant to the recommendation of the Establishment committee convened by the Directorate of Social Welfare on

17.06.2004 for the co-ordination among the employees, the following employees working under the District Programme Officer and Child

Development Project are being adjusted/absorbed.Ã¢â€(translated version)

While giving english version of that memorandum we have highlighted the expressions Ã¢â€adjusted/absorbedÃ¢â€ translated from the word lek;ksftr

because the appellantÃ¢â€s claim in this proceeding is largely based on construction of this particular word lek;ksftr. The word lkeatL; used in this

memorandum indicates coordination. The appellant wants us to construe this expression as "absorbed" and that is on what he has anchored his

plea for retiral benefits from the State Government. Submission of Mr. Arun, learned counsel for the appellant is that the appellant was absorbed in

the State service by virtue of the aforesaid memorandum dated 29th June, 2004.

4. The State's contention, on the other hand, is that there was no formal absorption of the appellant in the State and he had remained on deputation

only. Thus he could not be entitled to pensionary benefits. The State has disputed the appellant's stand that the memorandum of 29th June, 2004

reflects absorption of the appellant in State service. It is case of the State Government that the said memorandum only shows adjustment of the posts

among the employees working in the project in different locations.

5. Before the appellant attained the age of superannuation, the Deputy Collector Establishment, Chatra on 16th August, 2010 had directed the Child

Development Project Officer, Hunterganj for taking appropriate action for payment of pension and other benefits to the appellant. A specific request

from the Deputy Collector (Establishment), Chatra was made for expediting clearance of appellant's pension as per applicable Rules by a letter

dated 21st September, 2010, but there was no response to that communication. The appellant thereafter filed a writ petition before a learned Single

Judge of this Court, which was registered as W.P.(S) No. 2891 of 2011. That writ petition was disposed of on 19th July, 2011 with the following

observation and directions:-

"Heard the parties.

Learned counsel appearing for the petitioner submits that the petitioner got retired on 30.09.2010 from the post of Clerk while posted in the office of

C.D.P.O. Hanterganj, Chatra, but still not a single farthing towards post retiral benefits has been paid to him though the petitioner in this regard has

made several representation before the C.D.P.O.Hanterganj, Chatra as also before the Deputy Commissioner, Chatra but nothing was done in this

respect and, therefore, no option was left with the petitioner to move to this Court for directing the Authorities to make payment of the retiral dues to

him.

Since the matter is still to be decided by the Authorities, this writ application is disposed of directing the petitioner to file a fresh representation, raising

all his claims, which have been claimed in this writ petition, before the Director, Department of Social Welfare, Women and Child Development,

Government of Jharkhand, Ranchi (respondent no.2), along with a copy of this order, within three weeks from today so that the respondent no.2, on

receiving such representation, may take decision in the matter relating to the payment of retiral dues to the petitioner within a period of eight weeks

thereafter.

On such determination, the amount, found payable to the petitioner, be paid to him immediately thereafter.

6. After passing of that order in W.P.(S) No. 2891 of 2011, provisional pension from 1st October, 2011 to 31st July, 2011 amounting to Rs.97,010/-was

paid to the appellant along with gratuity and earned leave to the tune of Rs.3,12,128/- and Rs. 1, 95, 080/-. Such payments were made in the month of

August, 2011. From the month of August, 2011, however monthly pension of the appellant had been stopped without giving any reason. The writ

petition out of which this appeal arises, was filed on 9th December, 2011 after the appellant's representations for release of pension of the

appellant had yielded no positive result. Prayer was made for releasing the pension of the writ petitioner on month to month basis from August, 2011.

We have briefly referred to the other prayers made in the writ petition earlier in this judgment. In the meantime, on 21st September, 2011, an order

was passed by the Director, Social Welfare Government of Jharkhand, Ranchi rejecting the writ petitioner's representation filed on the basis of

the order passed in W.P.(S) No. 2891 of 2011 on 19th July, 2011. This rejection order, a copy of which has been made Annexure-11 to the writ

petition, reads:-

"That the writ petitioner's

representations are not acceptable and the writ petitioner is directed to file a fresh representation.

The writ petitioner is directed to file a fresh representation within a period of eight weeks from the date of the order.

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eight weeks thereafter.

On such determination, the amount, found payable to the petitioner, be paid to him immediately thereafter.Ã¢â‚¬â€

3- ekuuh; mPp U;k;ky;] >kj[k.M] jkÃ,Ã;ph }kjk mDr dafMdk&2 esa ikfjr vkns'k ds vkyksd esa Jh vfuy dkekj flUgk }kjk fnukad 01-08-11 dks ekuuh;

mPp U;k;ky; ds vkns'k dh Nk;kizfr ds lkFk vH;kosnu funs'kky; esa lefiZr fd;k x;k ftlesa mUgksaus Isokfuofr ykHk Hkqxrku ugha gksus dh ckr dgh

gSA

4- ekuuh; mPp U;k;ky; }kjk ikfjr vkns'k ds vkyksd esa Jh vfuy dkekj flUgk dks Isokfuofr ykHk Hkqxrku ds ekeys ij foLr`r leh{kk dh x;hA

leh{kksijkUr oLrqfLFkfr fuEu:is.k izdk'k esa vk;k%&

Ã,Ã¼dÃ,Ã½ Jh vfuy dkekj flUgk] fcgkj jkT; lqxj dkWjiksjs'ku fcgkj] iVuk ds deZpkjh Fks rFkk os dkWjiksjs'ku ds Isok 'krZ ls 'kkflr FksA

Ã,Ã¼[kÃ,Ã½ ifj;kstuk leUo;d] fo'o cSad IEiksf""kr vkbZ0lh0Mh0,l0&ll, ifj;kstuk izcU/kd dks""kkax] dY;k.k foHkkx fcgkj] iVuk ds vkns'k&251 fnukad 21-

03-1997 }kjk dfri; midzeksa@fuxeksa@cksMZ@i""kZn@lg;ksx lfeFr ds deZpkfj;ksa dks fofHkUu cky fodkl ifj;kstukvksa esa bl vk/kkj ij izfrfu;qfDr ij

inLFkkfir fd;k x;k gS fd izfrfu;qfDr fdlh Hkh le; leklr fd;k tk ldrk gSA blh vkns'k ,oa 'krZ ds vk/kkj ij Jh vfuy dkekj flUgk dh izfrfu;qfDr fyfid ds in ij

cky fodkl ifj;kstuk] dVdelkaMh Ã,Ã¼gtkjhcKxÃ,Ã½ esa fd;k x;k Fkka LFkkukUrj.k ds QyLo:i ;s cky fodkl ifj;kstuk] gaVjxat Ã,Ã¼prjkÃ,Ã½ esa inLFkkfir gq,

FksA

Ã,Ã¼xÃ,Ã½ Jh vfuy dkekj flUgk] cky fodkl ifj;kstuk] gaVjxat Ã,Ã¼prjkÃ,Ã½ esa izfrfu;qfDr ij dk;Zjr jgus ds nkSjku gh vius ok/kZd; Isok iwjh dj ysus ds

mijkUr fnukad 30-09-2010 dks Isok fuofr gks x;sA

Ã, 5- mi;qZDr dafMdkvksa ls ;g Li""V gS fd Jh vfuy dkekj flUgk fcgkj jkT; lqxj dkWjiksjs'ku ds deZpkjh Fks rFkk dsoy izfrfu;qfDr ds vk/kkj ij gh

fofHkUu cky fodkl ifj;kstukvksa esa dk;Zjr FksA vr% ;s vius fu;ksDrk iSr`d foHkkx fcgkj jkT; lqxj dkWjiksjs'ku ds fu;e] Isok 'krZ vkfn ls gh 'kkflr

FksA dsoy izfrfu;qfDr ek= ls iSr`d foHkkx esa /kkfjr in dk xzg.kkf/kdkj leklr ugha ekuk tk ldrk gSA bUgsa fdlh Hkh flFkfr esa ljdkjh Isod@jkT;dehZ

ugha ekuk tk ldrk gSA

6- foÃfâ,ek foHkkx] >kj[k.M ljdkj }kjk fuxZr i= la[k;k& 51 @fo0 fnukad 8-01-10 esa Li""V :i ls vafdr gS fd ^^izfrfu;qfDr fuxe@fudk;@cksMZ ds dehZ

ljdkj Isod ugha gSa^^A

7- vr% fjV ;kfpdk la[k;k& WP(S)-2891/11 esa ekuuh; mPp U;k;ky;] >kj[k.M] jkÃ,Ã;ph }kjk fnukad 19-07-2011 dks ikfjr U;k; fu.kZ; ,oa U;k; fu.kZ; ds

vkyksd esa Isokfuof`fr ykHk iznku djs Is lacaf/kr Jh fUgk }kjk lefiZr vkosnu ij leh{kksijUr fuEufyf[kr fu.kZ; fy;k tkrk gS & Jh vfuy dqekj fUgk]

fcgkj LVsV lqxj dkWjksjs'ku ds deZpkjh Fks rFkk ;s ek= izfrfu;qfDr ij cky fodkl ifj;kstukvksa esa dk;Zjr Fks ,oa budh Isok dk lek;kstu foHkx ;k ljdkj

}kjk ugha fd;k x;k Fkk vr% bUgsa jkT; dehZ ;k ljdkjh Isod ugha ekuk tk ldrk gSA mDr vkyksd esa bUgsa ljdkjh Isod dks ns; Isokfuof`fr ykHk vuqekU;

ugha gksxkAAçâ,~â€

Ãçâ,~â€Government of Jharkhand Department of Social Welfare, Women and Child Development (Social Welfare Directorate) Order

Sri Anil Kumar Sinha, superannuated clerk, Bihar State Sugar Corporation filed Writ Petition No. W.P.(S)-2891/11, Anil Kumar Sinha Versus the

State Government, in the HonÃçâ,~â„çble High Court, Jharkhand, Ranchi for the payment of retiral benefits from the State Government consequent upon

his superannuation during deputation in the Child Development Project Hunterganj, Chatra.

2. The HonÃçâ,~â„çble High Court has passed an order on 19.07.2011 in the aforesaid Writ Petition No. W.P.(S)-2891/11. The last para of the order is as

follows:-

Ãçâ,~â€Since the matter is still to be decided by the Authorities, this writ application is disposed of directing the petitioner to file a fresh representation,

raising all his claims, which have been claimed in this writ petition, before the Director, Department of Social Welfare, Women and Child

Development, Government of Jharkhand, Ranchi (respondent No.2) along with a copy of this order, within three weeks from today so that the

respondent Nos. 2 on receiving such representation may take decision in the matter relating to payment of retiral dues to the petitioner within a period

of eight weeks thereafter.

On such determination, the amount found payable to the petitioner, be paid to him immediately thereafter.Ãçâ,~â€

3. Pursuant to the order passed in the aforesaid para-2 by the HonÃçâ,~â„çble High Court, Jharkhand, Ranchi, Sri Anil Kumar Sinha submitted

representation in the Directorate along with a copy of order dated 01.08.2011 of HonÃçâ,~â„çble High Court in which he has stated about non-payment of

his retiral benefits.

4. Pursuant to the order passed by the HonÃçâ,~â„çble High Court detailed review has been done, on the matter of payment of retiral benefits to Sri Anil

Kumar Sinha. After review the following circumstances came into light:-

(a) Sri Anil Kumar Sinha was an employee of Bihar State Sugar Corporation, Bihar, Patna and he was governed by the service conditions of the

Corporation.

(b) Vide order-251 dated 21.03.1997 of the Project Co-Ordinator, World Bank sponsored ICDS-II, Project Management Cell, Welfare Department,

Bihar, Patna the

employees of the certain undertakings/Corporations/Boards/Council/Co-operative Society have been posted on deputation basis in the different Child

Development Projects, on the ground that their deputation may be terminated at any time. On the basis of this order and conditions, the deputation of

Sri Anil Kumar Sinha had been made against the post of clerk in the Child Development Project, Katkamsandi (Hazaribagh). As a result of transfer,

he was posted in the Child Development Project, Hunterganj (Chatra) (c) Sri Anil Kumar Sinha, superannuated on 30.09.2010 after completion of his

mandatory service in the course of deputation from the Child Development Project, Hunterganj (Chatra)

5. It is clear from the aforesaid paras that Sri Anil Kumar Sinha was an employee of Bihar State Sugar Corporation and he was working in the

different Child Development Projects only on deputation basis. Therefore, he was governed by the rules, service conditions etc. of his parent

department namely Bihar State Sugar Corporation. The lien of post held in the parent department cannot be deemed to be terminated only on the basis

of deputation. He cannot be deemed to be a government servant/State employee under any circumstances.

6. It is clearly mentioned in the Letter No. 51/Vi dated 8.01.10 issued by the Finance Department, Government of

Jharkhand that "the employees of the Corporation/Body/Boards on deputation are not a government employee."

7. Therefore, consequent upon the judgment passed by the Hon'ble High Court of Jharkhand, Ranchi on 19.07.2011 in writ petition W.P.(S) No.

2891/11 and representation submitted by Sri Sinha pursuant to the judgment for grant of retiral benefits, following decision has been taken after

consideration:-

Sri Anil Kumar Sinha was an employee of Bihar State Sugar Corporation and he was working in the Child Development Projects only on deputation

basis and the adjustment of his service was not done by the Department nor by the Government, therefore, he cannot be deemed to be an employee of

the State or Government servant. In such circumstances, the retiral benefits admissible to the government servant shall not be payable to him.

(translated version)

In the writ petition the appellant also sought for quashing of the rejection order dated 21st September, 2011 along with a subsequent order dated 28th

December, 2011, which was for recovery of the amount already paid to him. This recovery order was passed by the Child Development Project

Officer, Hunterganj. The recovery order has been quashed by the learned First Court. Hence, in this judgment, we are not dealing with that aspect of

the dispute.

7. The State-respondents contested the writ petition by filing counter-affidavit. We have already discussed the State's stand which was reflected

in the counter-affidavit. A circular bearing No. 51/Vi dated 8th January, 2010 issued by the Finance Department, Government of Jharkhand has also

been relied upon by Mr. Singh, learned counsel for the State, which stipulated:

"I am in a position to state that the Government of Jharkhand has also

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3- ,sls dfeZ;ksa dk osru vyx foi= ij cuk;k tk;sxx] ftli yky L;kgh ls Non-Government Servant Bill fy[kk gksA foi= ij fuxe esa /kkfjr in rFkk fuxe dk uke]

dks""B esa izfrfu;qDr fyfid] fy[kk tk,xkA mYys[kuh; gS fd dks""kkxkjksa esa ek= fyfid dk in Lohd`r gS blfy, ys[kk fyfid] lgk;d ys[kkiky vFkok ys[kkiky

fy[kus ij vuq'kklfud dkjZokbZ dh tk,xhA

4- dkfeZd] iz'kklfud lq/kkj ,oa jktHkk""kk foHkkx] >kj[kAM] jkÃ,Ã;ph ds ladYi la[k;k 5826 fnukad 26-10-2004 }kjk jkT; ljdkj ds ljdkj Isodksa dh Isokfuo`r

dh mez lhek 58 ls c<+kdj 60 o""kZ dj nh xbZ gSA ;g fuxe@fudk;@cksMZ ds dfeZ;ksa ij ykxw ugha gSA vr,o fuxe@fudk;@cksMZ ls izfrfu;qDr

dfeZ;ksa dks 58 o""kZ mez iwjh gksus ij Isokfuo`r dj nh tk;A

5- dks""kkxkj esa dk;Zjr vU; lHkh fyfidksa dks osruo`f) rFkk fdh Hkh rjg dk cdk;k Hkqxrku muesa osru fu/kkZj.k dk IR;kiu foÃfâ,çk foHkkx] >kj[kAM]

jkÃ,Ã;ph ls gksus ds ckn gh fd;k tk,xkAÃçâ,~â€

Ãçâ,~â€Letter No. Finance-7/Vividh 2043/06 51/Vi. Jharkhand Government Finance Department Ranchi, dated 08.01.2010. From, Rajbala Verma

Principal Secretary to the Government, Finance Department, Jharkhand, Ranchi.

To All the Deputy Commissioner, All the Treasury/Sub-Treasury Officer, Jharkhand.

Subject :- Regarding payment of salary etc. of the personnel deputed from the Corporation/Bodies. Sir,

Ã, With reference to above subject it is to state all general Order/Resolution/Circular of the government related to payment of salary and allowances

are issued for the personnel appointed in the government service. The personnel of the Corporation/Body/Board deputed in the Treasuries are not

government servant; therefore, these shall be not applicable to them. Their pay etc. and conditions are governed by the special order of the State

government. Any benefit, other than those conditions as mentioned in their deputation order, shall be given by the departmental order itself.

2. Pay scale of Rs.4000- 6000/- has been approved for the clerical cadre vide Finance Department Resolution No.660/Vi. dated 08.02.1999. As per

Resolution No. 660/Vi. dated 28.02.2009 of the Finance Department, Jharkhand, Ranchi, like Central Government, revised pay scale P.B.-1, Grade

pay Rs.2400/- is admissible to the clerks. Accordingly, they should be paid salary after the pay fixation in P.B.-1 (Rs.5200-20200), Grade pay

Rs.2400/- with effect from 01.01.2006. Next increment shall only be given after confirmation of pay fixation by the Finance Department. It should be

ensured that payment shall not be made in any other pay scale than this.

3. The pay of such personnel shall be prepared in a separate bill, mentioning Non-Government Servant in red ink therein. The bill shall bear the name

of post hold in the Corporation and name of the Corporation and also deputed clerk in bracket. It is pertinent that only the post of clerk is sanctioned in

the Treasuries and therefore, disciplinary action shall be taken on writing Account Clerk, Assistant Accountant or Accountant.

4. The retirement age of government servant of the State government has been increased from 58 years to 60 years vide Resolution number 5826

dated 26.10.2004 of the Department of Personnel, Administrative Reform and Rajbhasha, Jharkhand Ranchi. It is not applicable for the personnel of

the Corporation/Body/Board. Therefore, personnel deputed from the Corporation/Body/Board shall be made to retire on completion of 58 years of

age.

5. Increment or payment of arrear of any type to all other Clerks working in Treasury shall be made only after verification of their pay fixation by the

Finance Department, Jharkhand, Ranchi. (translated version) On this basis, it has been argued on behalf of the State that the appellant not being a

Government servant was not entitled to any pension and other retiral benefits.

8. The learned First Court accepted stand of the State on status of the appellant writ petitioner as a Government Servant and rejected the stand of the

appellant. Argument of the appellant that by the memorandum dated 29th June, 2004 (Annexure-4 to the writ petition) his service was absorbed

however was repelled by the learned First Court. It was held by the learned First Court in relation to the said memorandum:-

“(II) The question as to whether the petitioner can be treated to have retired as State Government employee is the moot point to be determined

so as to enable the petitioner to get the pensionary benefits. The petitioners has laid reliances on Annexure-4 to the writ application where the order

has been passed for adjustment of the number of employees where the name of the petitioner also finds place at serial no.5 but the supplementary

counter-affidavit filed on behalf of the respondents dated 22.04.2014 the word “Samanjasya” and “Samayojit” has been interpreted to be

adjustment but not absorption.

(III) In the writ application, the word adjustment/absorbed for the word “Samanjasya” and “Samayojit” has been used on the proper meaning

of aforesaid manner and not absorption therefore, the word “Samanjasya” and “Samayojit” is used in Annexure-4 dated 29.06.2004 denotes

to adjustment and not absorption. Moreover, the petitioner is admittedly an employee of the Bihar State Sugar Development Corporation Limited and

not an employee of the State Government. The circular no. 51/V dated 08.01.2010 of the Finance Department, Government of Jharkhand also

clarified that the employees deputed from different Boards, Corporation and bodies to the State Offices are not the employee of the State Government

since the petitioner is not a Government servant he will not be covered under the benefits of post retiral benefits.

9. The main question we shall be examining is as to whether the appellant was absorbed in the State service or not. On this point, as we have already

observed, the appellant's case is primarily anchored in the memorandum of 29th June, 2004.

10. Mr. Arun has referred to certain Hindi to English dictionaries in which the meaning of the word lekshtra in English has been shown as

“absorbed”. Learned counsel for the State however has submitted that proper English meaning of lekshtra is adjusted and not absorbed. But

absorption in service jurisprudence is a formal process in an organisation and the overall content of the memorandum dated 29th June, 2004 has to be

understood for coming to the conclusion as to whether by that memorandum, the appellant stood absorbed in the State service or not. Absorption

implies formal entry into a regular service. Mere use of the expression lekshtra in that memorandum, even if it means absorption, cannot confer the

status of a regular employee on the appellant straightway unless the memorandum has been issued for that very purpose or otherwise State's

intention to absorb the appellant can be derived from that memorandum.

11. So far as the aforesaid memorandum of 29th June, 2004 is concerned, we have quoted the text of the same earlier in this judgment. That

memorandum has been issued in pursuance of a letter bearing No. 13/2002, dated 28th August, 2003 of the Government of India Department of

Women and Child Development and pursuant to the recommendation of the Establishment Committee convened by the Directorate of Social Welfare

on 17th June, 2004 for the co-ordination among the employees. Here the adjustment appears to be in relation to their places of posting. That is how the

memorandum has been worded. This memorandum does not speak of absorption of the employees named therein in the State service, even if we

interpret the expression lekshtra as absorbed. The expression lekshtra can also mean adjusted, as would be evident from Universal Hindi-English

Legal Dictionary, Reprint edition, 2012. Thus, we do not find any flaw in the conclusion by the learned First Court that the words lekshtra; and lekshtra

as used in Annexure-4 to the writ petition (memorandum of 29th June, 2004) adjustment contemplated therein referred to adjustment within the staff

pattern not absorption. The Circular No. 51/V dated 8th January, 2010 independently prohibits such absorption of officers deputed from different

Boards/Corporations and Bodies to the State Offices. On this count, we do not find any flaw in the finding of the learned First Court.

12. Learned counsel for the appellant has relied upon a judgement of the Hon'ble Patna High court, in the case of Avinash Vatsyayan Vs. The

State of Bihar & Ors. delivered in L.P.A. No. 608 of 2006 decided on 19th April 2010 in support of his client's case. That was a case in which

certain employees of BISCOMAUN, a cooperative organisation in the State of Bihar, were sent on deputation for the purpose of being absorbed in

different wings or departments of the Government of Bihar. This was done as per recommendation of a High Level Committee constituted by the

Bihar Government. When the question came up for their absorption, the stand of the State was that those employees ought to be treated like ordinary

deputationists whose deputation could be terminated at any time. In this judgement, several similar cases were dealt with by the Hon'ble Division

Bench of the Patna High Court and as we find from paragraph no.6 of the judgment, the prayer in the writ petition was for a direction to absorb the

services of the petitioners under the Urban Development Department and to restrain the respondents concerned from returning them to the parent

organisation. The Division Bench had repelled the State's stand that the policy decision to send the eligible engineers of BISCOMAUN on

deputation for absorption was not formally notified. The Division Bench found that for a number of years such policy held the field and was acted

upon. In that judgment, the deputationists' plea for absorption was upheld. Judgment of a learned Single Judge of the Patna High Court in the case

of Md. Shamim Ansari vs- State of Bihar reported in 2002 (2) PLJR 579 involving a deputationist employee of Bihar Sugar Development

Corporation Ltd. who was successful in his sustaining his claim for absorption has been quoted with approval in the said Bench decision. There is

however a fundamental factual distinction between the cases decided by the Hon'ble Patna High Court in the said judgment and in this case in

that the concerned employees who approached the High Court were sent for deputation to different Government Departments as per recommendation

of a High Level Committee constituted by the Government of Bihar for the purpose of being absorbed in different Wings/Departments of the Bihar

Government. This is not the case which has been run by the writ petitioner here, who is the appellant before us in this proceeding.

13. The appellant's case before the learned First Court was that he stood already absorbed and no prayer has been made in the writ petition for a

mandatory direction for his absorption in the State of Bihar. The other authority which was relied upon by the appellant was a decision of Coordinate

Bench of this court dealing with four Letters Patent Appeals being L.P.A Nos. 340 of 2013, 357 of 2013, 311 of 2013 and 55 of 2014. The lead case

which was examined by the Coordinate Bench of this Court was L.P.A. No. 340 of 2013 (State of Jharkhand Vs. Dadan Prasad Singh & Ors.) This

judgment was delivered on 14th January, 2015. The writ petitioners in these four cases were initially the employees of different Boards/Corporations

in the erstwhile State of Bihar and were working on deputation in this State in the Directorate of Provident Fund as also in certain Treasury Offices.

They were all absorbed in the said Directorate. Dispute arose after their absorption when the State declined to treat their earlier services with the

Boards/Corporations for computation of pension and other retiral benefits. The learned Single Judge allowed their plea, which was upheld by the

Division Bench of this Court. We are apprised by the learned counsel for the appellant that a petition for special leave to appeal against this judgment

has been dismissed by the Hon'ble Supreme Court. The decision of the Coordinate Bench in the aforesaid judgment delivered on 14th January,

2015 however is not directly applicable in the facts of this case. In that judgment, the Coordinate Bench has accepted the continuity of service in the

parent organisation and in the posts to which they were deputed. But in the cases of the writ petitioners involved in those four appeals, they were

formally absorbed and the question of absorption was not in issue.

14. The other authority relied on by the appellant is also a decision of a Hon'ble Single Judge of the Patna High Court in CWJC No. 10016 of

2007 (Bihar State Government Employee's Association Vs. State of Bihar and Ors.) delivered on 6th April 2011. That action was brought by an

association in the representative capacity seeking absorption of their members in the posts in which they were working in different I.C.D.S Projects

under the Welfare Department, Government of Bihar. The association wanted the benefit of permanent absorption of their members. This case

involved employees of different Boards/Corporations/Public Sector Undertakings/Enterprises which were established by the Government of Bihar.

But these organisations were ultimately wound up as they were found to be non-viable. On the representations made from various quarters including

the employees themselves, the cases of the surplus employees were considered for absorption by the Treasuries and Accounts Directorate of the

Finance Department. They were posted initially on deputation against declared sanctioned posts available in different Government Treasuries and Sub-

Treasuries.

15. A learned Single Judge of the Patna High Court in the said judgment had in substance allowed the prayer for absorption of all the members of the

association, rejecting the plea of the respondents for their repatriation to the individual Boards/ Corporations/Public Sector Undertakings/Enterprises

which by then had become defunct. In that case also the initial selection process through which the deputationists were admitted into State service

was on the basis of a memorandum which indicated that after performance appraisal of the employees placed on deputation and on finding their

satisfactory service, the matters relating to extension of their deputation period as well as permanent absorption would be considered.

16. In the case of the appellant, no such promise for absorption was held out in the form of any official instrument. No such material has been cited

before us. The corporation, in which the appellant was originally working, has also not been impleaded as a party respondent in the writ petition. But

fact remains that the appellant has been serving the State Government in the said scheme since he was placed on deputation in the year 1997. He

reached his superannuation age while in State service only. At no point of time he was asked to go back to his original employer. Barring a formal

instrument of absorption, from the materials disclosed before us, it appears that for all practical purposes he was treated as a State Government

employee only. This fact would be also evident as at the initial stage, his pensionary benefits were released for a limited period of time. In the case of

Bihar State Government Employees' Association (Supra), direction in substance was given for absorption but in the writ petition out of which this

appeal arises, no such prayer has been made. For the reasons we have already disclosed, we cannot hold that the appellant stood already absorbed in

the State service. Under these circumstances, we do not think the learned First Court's findings suffer from any legal flaw. In our opinion, the

appellant cannot be granted any of the reliefs prayed for in the writ petition. But considering the peculiar factual background of this case, we give

liberty to the appellant to apply for absorption with retrospective effect. If such representation is made within eight weeks from date to the respondent

No.1, he shall consider the same on merit and not reject such representation because of delay. In the event the appellant's status falls in line with

the legal position recognised in the aforesaid three authorities, then the plea of the appellant for absorption shall not be declined on the ground of the

circular bearing No. 51/Vi dated 8th January, 2010. We are making this observation in view of the nature of service rendered by the appellant in the

Government of Jharkhand. We have dealt with that aspect in detail in the earlier part of this judgment. However, if no such representation is made

within the aforesaid time frame, the authorities would be under no obligation to consider such representation. Once such representation is made within

the said period, the respondent No.1 shall take a decision thereon in accordance with law upon giving opportunity of hearing to the appellant within a

further period of twelve weeks.

17. The judgment of the learned First Court stands modified to the above extent and the appeal is accordingly disposed of without any order as to

costs.