HIGH COURT OF JHARKHAND

Bench: Hon'ble Dr. Justice S.N. Pathak

Date of Decision: 17th May 2024

W.P.(S) No. 732 of 2018
W.P.(S) No. 2922 of 2018
W.P.(S) No. 5861 of 2018
W.P.(S) No. 5986 of 2018
W.P.(S) No. 100 of 2016
W.P.(S) No. 642 of 2018

Satya Narayan Tiwary & Ors. … PETITIONER(S)

Versus

The State of Jharkhand & Ors. … RESPONDENT(S)

Legislation:
Article 166 of the Constitution of India
Section 6 of the General Clauses Act, 1872

Subject: Challenges to the cancellation of pension and gratuity benefits for employees of recognized non-government Madarsas and aided Sanskrit schools appointed on or before 30.11.2004, arising out of Resolution No. 1773 dated 21.06.2018.

Headnotes:

Constitutional Law – Article 166 Compliance – Executive action taken without Governor's name – Petitioners' accrued right to pension and gratuity annulled by impugned resolution – Court examines validity of resolution not expressed in Governor's name – Upholds principle that policy decisions affecting rights must be issued in the name of Governor – Resolution annulling earlier benefits quashed for non-compliance with constitutional requirement [Paras 13-19, 31].

Classification and Equality – Sub-classification within a Class – Validity of Resolution creating sub-classification among employees – Petitioners

deprived of pension benefits due to annulling resolution – Court finds such sub-classification arbitrary and violative of equality principles – All employees appointed on or before cutoff date should be treated equally for pension benefits [Paras 22-23].

Legitimate Expectation – Protectable Interest – Pension and gratuity benefits – Petitioners' legitimate expectation of receiving benefits based on earlier resolution – Impugned resolution negating such expectation held as unjust – Rights accrued under validly issued resolution cannot be unilaterally taken away [Paras 30-31].

Decision – Writ Petitions Allowed – Held – Impugned Resolution No. 1773 dated 21.06.2018 quashed – Petitioners entitled to pensionery benefits and gratuity as per earlier valid resolution – Respondents directed to calculate and pay benefits within three months [Paras 31-32].

Referred Cases:

- State of Kerala v. A. Lakshmikutty (1987) 1 SCC 275
- D.S. Nakara v. Union of India (1983) 1 SCC 305
- K.J.S. Buttar v. Union of India (2011) 11 SCC 429
- Kallakkurishi Taluk Retired Officials Assn. v. State of Tamil Nadu (2013) 2 SCC 772
- Dattatraya Moreshwar Pangarkar v. State of Bombay (1952) SCR 612
- State of M.P. v. Yashwant Trimbak (1996) 2 SCC 305

24/ **17.05.2024** The issues involved in these writ petitions are common and hence the same have been heard together and being disposed of analogously. Since in all these writ petitions, almost the same facts are there and hence for the purpose of convenience, the facts of W.P.(S) No. 5861 of 2018, titled as

'*Jharkhand Pradesh Madarsa-Sanskrit Sikshak Sawanmay Samiti & Ors. Vs. The State of Jharkhand & Ors*.' are being taken into consideration.

2. Heard the learned counsel appearing for the petitioners and learned Addl. Advocate General as well as other learned counsel representing the respondent-State, as also the learned counsel appearing for the respondent-Accountant General.

Prayers

3. The petitioners have thrown challenge to Resolution No. 1773 dated 21.06.2018 issued under the pen and signature of the Additional Secretary, School Education and Literacy Department, Govt. of Jharkhand, Ranchi, whereby the earlier Resolution No. 2020 dated 24.10.2014 by which the employees of 186 recognised Non-Government Madarsas and 12 recognized Non-Government Aided Sanskrit Schools, appointed on or before 30.11.2004 were made entitled to receive pension / gratuity, has been cancelled / annulled. A further prayer has been made to declare that the Resolution No. 2020 dated 24.01.2014 issued by the order of the Governor of Jharkhand is valid, constitutional, in consonance with the provisions enshrined in Jharkhand Pension Rules and even otherwise the same is in accordance with law and hence, the respondents are duty bound to abide by Resolution dated 24.10.2014. The petitioners have further prayed to hold and declare that employees of recognised non-Government Aided Madarsas and Sanskrit Schools are entitled for pension / gratuity on their retirement, if they were appointed on or before 30.11.2004 and the respondents are duty bound to pay pensionery benefits to such retired employees.

The Facts.

4. The facts pleaded in W.P.(S) No. 5861 of 2018 are that the petitioner No.1 is unregistered Samiti of employees of Madarsa and Sanskrit schools; petitioner no.2 is an employee of Madarsa Hussainia Tajweedul Quran, Dighi in the district of Godda; petitioner Nos. 3 and 4 are the employees of Ramyasho Ray Sanskrit High School, Madhupur, Deoghar; and petitioner no. 5 is a registered Association under the Societies Registration Act, 1860. Similarly petitioner no. 6 is himself an employee of Madarsa Sajjadia Kajru Kalan, Pandu, Palamau. The facts further revealed that there are total 186 Madarsas, which were fully funded by the Government, functioning in the State of Jharkhand. Similarly there are 12 Sanskrit Schools located in the entire State of Jharkhand, which are fully funded by the Government of Jharkhand, though these are nonGovernment Organizations, but these are recognised (with finance) by the State of Jharkhand. Salaries and other

benefits like pay revision etc. in respect of employees of these schools are done and decided by the Government of Jharkhand at par with the employees of the Government schools located in the State of Jharkhand. Right from their appointment in undivided State of Bihar, the petitioners were getting the benefits at par with the employees of Government schools. Time to time, the pay of the employees of these Madarsas and Sanskrit schools are revised on the basis of recommendation of Pay Revision Commission's report. In support of their pleadings, they have annexed Resolution No. 2956 dated 25.11.2011, whereby the pay of the employees of these 186 Madarsas and 12 Sanskrit schools were revised with effect from 01.01.2006 under 6th PRC. The petitioners have further pleaded that employees of non-Government Minority Schools are getting the pensionery benefits vide Resolution No. 284 dated 03.02.2012 issued by the Human Resource Development Department (now known as School Education and Literacy Department), Govt. of Jharkhand, Ranchi. Even the employees of minority colleges located in the entire State of Jharkhand are getting aid from the Government and they have been made entitled for pensionery benefits by Resolution No. 1470 dated 19.12.2012. Considering all these aspects of the matter, it has further been pleaded that Government of Jharkhand issued Resolution No. 2020 dated 24.10.2014 whereby the pensionery benefits like others were extended to the teaching and non-teaching employees of these 186 Madarsas and 12 Sanskrit schools in terms of the provisions enshrined in Jharkhand Pension Rules. The facts further revealed that petitioner no.3 (Ghan Shyam Jha) retired on 30.06.2015 from the post of Clerk from Ram Jasho Ray Sanskrit High School, Madhupur, Deoghar, which is one of the 12 Sanskrit schools fully aided by the Government of Jharkhand. This petitioner became entitled for pensionery benefits in view of Resolution No. 2020 dated 24.10.2014 on the date of his superannuation. It is further pleaded that if Resolution No. 2020 dated 24.10.2014 not implemented, this petitioner was supposed to retire at the age of 62 years, but in view of implementation of this Resolution, he stood retired on completion of 60 years. It is further case of the petitioners that Department of Finance, Govt. of Jharkhand questioned the Resolution No. 2020 dated 24.10.2014 by letter No. 1159/F dated 24.04.2015. Thereafter, finally the impugned Resolution No. 1773 dated 21.06.2018 was issued whereby the earlier Resolution No. 2020 dated 24.10.2014 has been annulled. It has been pleaded in the writ petition that the right which has accrued to the petitioners cannot be taken away unilaterally by virtue of the impugned resolution dated 24.06.2018.

5. From the facts of W.P.(S) No. 5986 of 2018, it appears that petitioner No. 1 (Md. Zahid Hussain) was appointed on 15.04.1977 and his date of birth is 09.01.1955; he completed 60 years of service on 31.01.2015 and stood retired on completion of 60 years of his age on 31.01.2015. Similarly, the husband of petitioner No. 2 (Jebun Nisha) was appointed on 15.04. 1984 and he also retired on 31.05.2015 on completion of his age of 60 years, as the date of birth of husband of this petitioner no.2 was 06.03.1955. Petitioner No.1 and husband of Petitioner No.2 both were appointed as Assistant Teacher and retired from Madarsa Islamia, Madhpur, Deoghar. The fact further revealed that in view of the departmental Resolution No. 2020 dated 24.10.2014, the office of Accountant General (A&E), Jharkhand issued pension intimation memo in favour of husband of petitioner no.2 on 08.04.2016. Gratuity Payment Order was also issued on 8.4.2016 in favour of husband of petitioner No.2. In respect of petitioner No.1, also the pension intimation memo was issued on 12.04.2016. Even Gratuity Payment Order in respect of petitioner no.1 was also issued by the office of Principal Accountant General (A&E), Jharkhand on 12.04.2016. These facts are evident from Annexure-4 series of the writ petition. However, the husband of petitioner No.2 died on 14.09.2018 and these petitioners have been running from pillar to post for payment of retiral benefits despite the fact that the authority slips were already issued by the office of Accountant General (A&E), Jharkhand for payment of pension and gratuity, in view of issuance of the impugned Resolution No. 1773 dated 21.06.2018, which has affected the accrued right of the petitioners.

6. The facts of W.P.(S) No. 732 of 2018 revealed that both the petitioners retired from the post of Assistant Teacher, Yoganand Sanskrit High School, Kakmath, Dhanbad on completion of 60 years of age. The said school is one of the 12 Sanskrit Schools fully aided by the Government. It is further pleaded that in view of implementation of Resolution No. 2020 dated 24.10.2014, their entire service excerpts have been sent to the office of Accountant General (A&E), Jharkhand for payment of pension and gratuity, but the same have been returned to the petitioners without any reason. It is pleaded that in view of the impugned Resolution No. 1773 dated 21.06.2018, the right accrued to the petitioners for getting pensionery and gratuity benefits have been taken away unilaterally.

7. The facts of W.P.(S) No. 2922 of 2018 are also similar to those of W.P.(S) No. 732 of 2018. Herein also, the petitioners stood retired after issuance of Resolution No. 2020 dated 24.10.2018 from the post of Teachers, Sanskrit

High School, Doranda in the district of Giridih and their entire service records were sent to the office of Accountant General (A&E) for fixation of pension and gratuity, but the same were returned to the petitioners without any assigned reason. It is the pleadings of the petitioners that due to issuance of impugned resolution dated 21.06.2018, they are deprived from getting the fruits of pensionery benefits including gratuity.

8. The facts of W.P.(S) No. 100 of 2016 are that they were working in Madarsa on the post of Moulvi retired on 31.10.2014 and 31.08.2015 respectively. Similar is the case of W.P.(S) No. 642 of 2018 that he retired on 31.10.2014 from the post of Assistant Teacher, Sri Yoganand Sanskrit High School, Kankomarh, Dhanbad. Though their service excerpts were sent to the office Accountant General for payment of pensionery benefits, but no decision has been taken as yet.

9. Counter affidavits have been filed in these writ petitions. Specific stand has been taken by the respondent-State that since the Madarsas and Sankrit Schools are guided by a special Act and the same is not at par with the Government aided including minority schools; the teaching and non-teaching employees of Madarsas and Sanskrit schools are not entitled for the benefits of pension and gratuity. Considering the entire aspects of the matter, the Additional Secretary, School Education and Literacy Department, Govt. of Jharkhand has annulled the earlier Resolution No. 2020 dated 24.10.2014 and issued the impugned Resolution No.1773 dated 21.06.2018 disentitling the employees of Madarsas and Sanskrit High Schools from pension and gratuity. A supplementary counter has also been filed in W.P.(S) No. 2926 of 2016, bringing on record the new Resolution No. 2666 dated 14.10.2022, whereby a decision has been taken to extend the pensionery benefits to the employees of Madaras and Sanskrit schools in the entire State of Jharkhand and it has been made effective from the date of issuance of the resolution.

Arguments advanced by learned counsels for the Petitioners

10. Mr. Manoj Tandon, learned counsel appearing for the petitioners in W.P.(S) Nos. 5861 of 2018 and 5886 of 2018 has attacked the impugned Resolution No. 1773 dated 21.06.2018 on the ground that the Resolution is not expressed in the name of the Governor of Jharkhand and the same is evident from perusal of this Resolution itself. He draws the attention of this Court towards Resolution No. 2020 dated 24.10.2014, which is issued by the order of the Governor of Jharkhand. During course of argument, further attention of this Court has been drawn towards Resolution No. 2666 dated 14.10.2022, which was also issued by the order of the Governor of Jharkhand. These two

resolutions dated 24.10.2014 and 14.10.2022 have been issued by the Secretary / Principal Secretary of the Department and expressed in the name of the Governor of Jharkhand in terms of Article 166 of the Constitution of India. He further submits that the impugned resolution dated 21.6.2018 is not in terms of Article 166 of the Constitution of India. Mr. Tandon further argues that the previous resolution whereby the benefits were extended and the later resolution whereby the benefits were further extended i.e. Resolution No. 2666 dated 14.10.2022, both were expressed in terms of Article 166 of the Constitution of India whereas the impugned resolution was issued just under the signature of Additional Secretary of School Education and Literacy Department, Govt. of Jharkhand. Referring to these resolutions, it is the argument of the learned counsel for the petitioner that the impugned resolution dated 21.6.2018 cannot be said to be a decision of the State of Jharkhand. He further submits that no reason has been assigned in the impugned resolution dated 21.6.2018 whereas from perusal of the previous resolution dated 24.10.2014 and the latest resolution dated 14.10.2022 cogent reasons have been assigned considering all the provisions of law entitling the employees to get the pensionery benefits after the retirement. It has been argued by Mr. Tandon that the respondents have created class within a class, which is not permissible under the Constitutional scheme. To support his submission, he draws the attention of this Court that benefit of pension and gratuity were extended to all the employees, who were appointed on or before 30.11.2004, which is evident from the resolution dated 24.10.2014. He further points out that by resolution dated 14.10.2022 also, the benefits were extended to all those who were appointed on or before 30.11.2004, but the employees who retired in between 21.6.2018 and 14.10.2022 have been deprived of pensionery benefits for no assigned reasons. This is so because the resolution dated 14.10.2022 was made effective from the date it was issued. It is the contention of the petitioners, therefore, that a sub-classification within the classification is not permissible in the eye of law. It is submitted that once the State Government took a conscious decision by resolution dated 24.10.2014, which was expressed in the name of the Governor of the Jharkhand, the Finance Department of the State of Jharkhand had no business to issue letter dated 20.4.2016 [Annexure-5 to W.P.(S) No. 5861 of 2019]. It is further argued that such objection of the Finance Department dated 20.4.2016 has in fact overruled the Government decision while issuing impugned resolution dated 21.06.2018. The further argument of Mr. Tandon is that the benefits which

have accrued to one or other employees by resolution dated 24.10.2014 and before the impugned resolution dated 21.6.2018 cannot be taken away unilaterally by the State of Jharkhand that too without assigning any reason therefor. The employees who retired prior to 21.6.2018 are in any case entitled for post-retiral benefits including pension and gratuity. It has further been argued that in the case of petitioners of W.P.(S) No. 5986 of 2018 even the authority slips were issued by the office of Accountant General for payment of pension and gratuity, as the employees retired on 31.01.2015 and 31.05.2015 respectively. It is further submitted that right which has accrued to the employees cannot be taken away unilaterally that too by the impugned resolution dated 21.6.2018, which is not even expressed in the name of the Governor of Jharkhand and the same cannot be treated to be a decision of the State of Jharkhand. Mr. Tandon has responded to the judgments cited by the learned counsel appearing for the respondent-State and submits that the judgment in the case of State of M.P. & Ors. Vs. Dr. Yashwant Trimbak, reported in (1996) 2 SCC 305 to support the contentions of the respondent-State is wholly misplaced. It is the contention of Mr. Tandon that in that case that the order had executed in the name of the Governor and was duly authenticated by the signature of the Under Secretary to the Government and these facts are clear from paragraph-10 of the judgment.

11. Mr. Amit Kumar Das, learned counsel appearing for the petitioners in W.P.(S) No. 732 of 2018 while assailing the impugned resolution submits that similar issue fell for consideration before the Division Bench of this Court in L.P.A. No. 560 of 2017 (The State of Jharkhand & Ors. Vs. Daisy Kongari & Ors.) and its analogues cases, when the State of Jharkhand was not inclined to extend the pensionery benefits to the employees of affiliated and minority colleges in the State of Jharkhand who retired before 19.12.2012. While dismissing the letters patent appeals and upholding the decision of the learned Single Judge, the Division Bench held that no reason has been assigned for denying the benefits to teaching and non-teaching staff superannuated prior to 19.12.2012. He further submits that the said judgment passed in the letters patent appeals was affirmed by the Hon'ble Supreme Court of India in the case of '***The State of Jharkhand & Ors. Vs. Basant Kumar Bilung & Ors.***' while dismissing the **Special Leave Petition (Civil) Diary No. 6147 of 2020** on 06.02.2020. Mr. Das has also referred to Section 6 of the General Clauses Act, 1872 to support his contention that even if the resolution dated 24.10.2014 was annulled on 21.6.2018, the same cannot take away the accrued right to the petitioners unilaterally.

Arguments advanced by learned counsel for the Respondent-State

12. Mr. Sachin Kumar, learned Addl. Advocate General-II representing the respondent-State submits that the impugned resolution dated 21.6.2018 cannot be appealed on the ground that it is not expressed in the name of the Governor of Jharkhand. He further submits that the Council of Ministers has taken a decision and it is a sufficient compliance.

In support of his contentions, he relied upon a judgment in the case of ***Dattatraya Moreshwar Vs. State of Bombay***, reported in AIR 1952 SC 181. Mr. Sachin Kumar has also relied upon another reported decision in the case of ***State of M.P. & Ors. Vs. Dr. Yashwant Trimbak*** (1996) 2 SCC 305. More particularly, he relied upon paragraph nos. 10, 11, 12 and 13 of the said judgment. It is argued by learned counsel for the State that the respondents have the power and authority to pass the impugned resolution dated 21.6.2018 and to annul the earlier resolution dated 24.10.2014. It is further submitted that however the Government itself has come out with a new decision to extend the pensionery benefits to the retired employees of Madarsas and Sanskrit schools by resolution No. 2666 dated 14.10.2022 and hence, no interference is warranted by this Court. The other State Counsel appearing in other writ petitions have adopted the arguments advanced by Mr. Sachin Kumar, learned AAG-II. While referring to the statements made in paragraph-14 of the counter affidavit in W.P.(S) No. 5861 of 2018, it has been argued by the learned counsel for the State that getting salary at par with the teachers of the Government school does not entitle the members of the petitioners to claim all the benefits payable to the teachers of Government schools. While referring to Annexure-B of the supplementary counter affidavit filed by respondent no. 5 in W.P.(S) No. 2926 of 2016, more particularly paragraph-11, it is submitted that as per resolution no. 2666 dated 14.10.2022 already a decision has now been taken to extend the pensionery benefits to the employees of Madarsas and Sanskrit schools in the entire State of Jharkhand and hence, merely because the said resolution has been made effective from the date of resolution i.e. dated 14.10.2022, no cause of action has arisen to the petitioners to assail the impugned resolution dated 21.06.2018. Lastly, learned counsels have submitted that the writ petitions lacked merit and the same are fit to be dismissed.

Findings of the Court

13. Having heard the learned counsel for the parties and looking into the facts of the present case, this Court find that it is not in dispute that the Government of Jharkhand took a decision in the shape of Resolution No. 2020 dated

24.10.2014, whereby the teaching and non-teaching employees of total 186 Madarsas and 12 Sanskrit schools, whose appointment was made on or before 30.11.2004, were made entitled to pension and gratuity on their retirement at the age of 60 years at par with the non-governmental aided minority schools, with certain conditions as mentioned therein. This resolution was expressed in the name of His Excellency, the Governor of Jharkhand.

14. It is also not in dispute that by the impugned Resolution No. 1773 dated 21.06.2018, the benefits accrued to the employees of 186 Madarsas and 12 Sanskrit schools were taken away. From perusal of the impugned resolution, it is abundantly clear that the same is issued by the signature of Additional Secretary, School Education and Literacy Department and not expressed in the name of His Excellency, the Governor of Jharkhand. The petitioners have assailed the impugned resolution on various grounds including the ground that the said resolution cannot be treated to be the decision of the State of Jharkhand. Reference in this context has been made to Article 166 of the Constitution of India, which reads thus:-

166. Conduct of Business of the Government of a State.-

(1) ***All executive action of the Government of a State shall be expressed to be taken in the name of the Governor****.*

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

[***emphasis supplied***]

The aforesaid Article 166 of the Constitution of India was amended by Constitution (42nd Amendment) Act of 1976 and Clause (4) was inserted in following terms:-

"(4) No court or other authority shall have the authority to require the production of any rules adopted pursuant to Clause (3) for the more expeditious conduct of the business of the State Government."

But the said Clause (4) was omitted by the Constitution (Fortyfourth Amendment) Act, 1978.

15. Further from conjoint reading of Article 166, it appears that though it had concern primarily with conduct of business, but has considerable constitutional importance. The principle that all executive action must be expressed to be taken in the Governor's name, seems to carry the implication that a decision of the Council of Ministers does not become an order of the State Government, until it is sent out as the Governors order. This view was expressed in the case of ***State of Kerela Vs. A. Lakshmikutty (Smt),*** reported in AIR 1987 SC 331.

16. There are other judgments of Constitutional Benches on this point by the Hon'ble Supreme Court of India. Some of them are ***Bachhittar Singh Vs. State of Punjab***, reported in **AIR 1963 SC 395** and ***R. Chitralekha Vs. State of Mysore***, reported in **AIR 1964 SC 1823**. From perusal of judgment of ***Bachhittar Singh*** (*supra*), it can safely be held that the Governor has to act on the aid and advice of the Council of Ministers and that until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Admittedly, the impugned decision affected a large number of persons in the entire State of Jharkhand. The benefits accrued to the persons were taken away unilaterally by issuing the impugned resolution. This decision, therefore, was required to be communicated to persons affected by issuance of a decision taken in terms of Article 166 of the Constitution of India, which admittedly was not done by the respondent-

State.

17. These writ petitions are pending for last six years as they were filed in the year 2018. Time to time various orders were passed by this Court. By order dated 10.10.2023, on the point raised by the learned counsel for the petitioners, this Court directed the respondent-State to bring on record as to whether the resolution dated 21.06.2018 was taken by the State of Jharkhand. When such issues are raised and this Court directed the State-respondent to establish as a question of fact that as to whether the order was issued by the State of Jharkhand, it is bounded duty of the Staterespondent to establish that actually the decision was taken by the State of Jharkhand or the Governor. Reference in this context may be made to the Constitutional

Bench judgment of this Court in ***R.Chitralekha*** (supra). The State, however, in this context failed to establish the fact that the impugned decision was taken by the State of Jharkhand or the Governor. The State has relied upon the judgment in the case of Dattatraya Moreshwar (supra). In the said case, the Hon'ble Supreme Court holds that the strict compliance of Article 166 of the Constitution is not to be the requirement of law in every case and if every executive decision has to be given a formal expression in the name of the Governor, the whole Government machinery will be brought to a standstill. But at the same time, the State has to establish as a question of fact when such issues are raised that it is actually the decision of the State of Jharkhand or not. This Court cannot lose sight of the fact that earlier decision by Resolution No. 2020 dated 24.10.2014 was issued and expressed in the name of the Governor and the later decision contained in Resolution No. 2666 dated 14.10.2022 was also expressed in the name of the Governor, but what prevented the State to follow such principle while issuing the impugned Resolution No. 1773 dated 21.06.2018 on the same subject matter. Therefore, the State was bound to explain before this Court as to what are the reasons to deviate from such settled principle which have been followed by the State itself in two Resolutions, but not in the impugned resolution dated 21.06.2018.

18. This Court takes judicial notice of the fact that even in the matter of transfer / posting of Gazetted officers in the State cadre and service, the same are expressed in the name of the Governor of Jharkhand and it cannot be a denying fact. But such principle was not adhered to by the State of Jharkhand while issuing the impugned decision dated 21.06.2018 and the reasons are unknown to this Court. Such issue cannot be left at the whims, fancy and discretion of one or other officers of the State of Jharkhand.

19. The State took a decision in the shape of resolution i.e. Resolution No. 2020 dated 24.10.2014 to extend the pensionery benefits including gratuity to the teachers of Madarsas and Sanskrit schools. The Finance Department in the shape of letter dated 20.4.2016, which has been brought on record as Annexure-5 to the W.P.(S) No. 5861 of 2018, has no business to doubt of the decision of the State Government, which was in fact expressed in the name of the Governor of Jharkhand. The decision contained in Resolution no. 2020 dated 24.10.2014 is expressed in the name of the Governor of Jharkhand and signed by the Principal Secretary, School Education and Literacy Department. This Court fails to appreciate that such decision cannot be questioned by a Special Secretary of the Finance Department. Strangely

enough on such letter of the Finance Department dated 20.04.2016, the impugned decision in the shape of resolution has been issued that too without expressing in the name of the Governor of Jharkhand. Resolution (s) cannot be permitted to be issued by an Additional Secretary of the Department. Such decision can only be expressed in the name of the Governor of Jharkhand and not otherwise. It appears that without following the procedure established by law, such resolution was issued.

20. Moreover, the State of Jharkhand itself has overridden the objections of the Finance Department by issuing Resolution No. 2666 dated 14.10.2022 and the same has been expressed in the name of Governor of Jharkhand. Therefore, the respondent-State is aware that resolution(s) is always issued in the name of the Governor of Jharkhand. A policy decision cannot be issued by an Additional Secretary. Therefore, the impugned resolution is per se arbitrary and illegal.

21. This Court has gone through the Resolution No. 2020 dated 24.10.2014 and the Resolution No. 2666 dated 14.10.2022 and comes to the conclusion that these two decisions are a conscious decision taken by the State of Jharkhand. Deviation there from by the impugned resolution dated 21.06.2018 cannot be appreciated. This Court, therefore, holds that the impugned resolution is unreasonable, arbitrary and without following the procedure of law, as it appears from bare perusal of impugned Resolution No. 1773 dated 21.06.2018 itself. The impugned decision has been taken without any discussion at all. It may be argued relying upon the judgment in the case of ***Dattatraya Moreshwar*** (*supra*) that the discussions are there in the file, but the discussions or notings in the file cannot take the shape of the decision of the State of Jharkhand unless the same is communicated to the Stakeholder in the manner as established by law. In fact, the State of Jharkhand itself has followed such established principle while issuing Resolution No. 2020 dated 24.10.2012 and Resolution No.2666 of 14.10.2022. Therefore, the impugned decision cannot be sustained in the eye of law.

22. The arguments advanced by the learned counsel for the petitioners that accrued right cannot be taken away unilaterally are supported by legal propositions. The glaring facts of the case revealed that employees were made entitled for pensionery benefits by Resolution dated 24.10.2014 and whosoever was entitled remain entitled till the impugned decision was taken on 21.06.2018. These employees were again made entitled to receive pensionery benefits on or after issuance of Resolution No. 2666 dated

14.10.2022. The facts further revealed that even the Accountant General issued the authority slips in favour of petitioners of W.P.(S) No. 5986 of 2018. Despite this, the respondent-State failed to pay the pensionery benefits. This Court, therefore, holds that such accrued right to the employees cannot be taken away unilaterally in the shape of the impugned resolution dated 21.6.2018. This impugned decision is per se arbitrary in character.

23. It has rightly been argued by Mr. Manoj Tandon, learned counsel appearing for the petitioners that the respondent-State has created a sub-class within a class. The employees, those who were appointed on or before 30.11.2004 are one and the same class of person. Giving the benefits of those on or after retirement on 14.10.2022 creates a sub-class between the same set of employees. This Court holds so because for the reason that in 2014 itself, the decision was taken to extend such pensionery benefits and the said decision remained into force upto 21.06.2018. There is nothing in the impugned resolution dated 21.06.2018 that the same has been given retrospective effect or not. Therefore, the employees who retired in between 24.10.2014 and 21.06.2018 are entitled for such pensionery benefits and those who retired on or after 14.10.2022 are also entitled for such benefits. But such benefits have been snatched away by the respondent-State in respect of those who retired in between 21.06.2018 and 14.10.2022. Such type of classification is not permissible in the eye of law, there has to be a rational classification, as has been held by the Hon'ble Apex Court in the case of K.J.S. Buttar Vs. Union of India & Anr., reported in (2011) 11 SCC 429, as also in the case of Kallakkurishi Tuluk Retired Officials Association, Tamil Nadu & Ors., Vs. State of Tamilnadu, reported in (2013 2 SCC 772. The relevant paragraphs of these judgments are quoted herein extenso:-

"28. The question regarding creation of different classes within the same cadre on the basis of the doctrine of intelligible differentia having nexus with the object to be achieved, has fallen for consideration at various intervals for the High Courts as well as this Court, over the years. The said question was taken up by a Constitution Bench in D.S. Nakara where in no uncertain terms throughout the judgment it has been repeatedly observed that the date of retirement of an employee cannot form a valid criterion for classification, for if that is the criterion those who retired by the end of the month will form a class by themselves. In the context of that case, which is similar to that of the instant case, it was held that Article 14 of the Constitution had been wholly violated, inasmuch as, the Pension Rules being statutory in character, the

amended Rules, specifying a cut-off date resulted in differential and discriminatory treatment of equals in the matter of commutation of pension. It was further observed that it would have a traumatic effect on those who retired just before that date. The division which classified pensioners into two classes was held to be artificial and arbitrary and not based on any rational principle and whatever principle, if there was any, had not only no nexus to the objects sought to be achieved by amending the Pension Rules, but was counterproductive and ran counter to the very object of the pension scheme. It was ultimately held that the classification did not satisfy the test of
Article 14 of the Constitution."

(emphasis supplied)

In the case of ***Kallakkurishi Tuluk Retired Officials Association, Tamil Nadu & Ors***. (*supra*), the law has been laid down as follows:-

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

24. The principle of 'effect of repeal' is enshrined in Section 6 of the General Clauses Act, 1872. From perusal of Section 6(c) thereof, it is evident that repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. Even if the Resolution

No. 2020 dated 24.10.2014 is annulled on 21.06.2018, that by itself would not take away the accrued right of the employees which flows from Resolution No. 2020 dated 24.10.2014.

25. Learned Addl. Advocate General placed heavy reliance upon the judgments in the case of ***Dattatraya Moreshwar*** (*supra*) and also in the case of ***State of M.P. & Ors. Vs. Dr. Yashwant Trimbak*** (*supra*). Before coming to a conclusion as to whether the judgments help the petitioners or the State, the same have to be examined. The paragraph-10 of the judgment in the case of ***State of M.P. Vs. Dr. Yashwant Trimbak*** (*supra*) is quoted herein below:-

"***10.*** *Coming to the first question, from a bare look at the order which was served on the respondent, it is implicitly clear that the said order has been executed in the name of the Governor and has been duly authenticated by the signature of the Under-Secretary to the Government and therefore the bar to judicial enquiry with regard to the validity of such order engrafted in Article 166(2) of the Constitution will be attracted. The order which is expressed in the name of the Governor and is duly authenticated cannot be questioned in any court on the ground that it is not made or executed by the Governor. The signature of the Secretary or Under-Secretary concerned who is authorised under the authentication rules to sign the document signifies the consent of the Governor as well as the acceptance of the advice rendered by the Minister concerned. It is not the case of the respondent and Mr Jain appearing for the respondent in this Court did not urge that the order in question is not an order within the meaning of Article 166(2) of the Constitution. But according to Mr Jain under the Rules the Governor being the authority to sanction and the Governor not having sanctioned, the prohibition contained in sub-article (2) of Article 166 of the Constitution cannot be attracted and the court's power to examine is not taken away. We are unable to accept this contention of Mr Jain, appearing for the respondent.*

26. From bare perusal of the said paragraph, it appears that the order in question was executed in the name of the Governor and the same was duly authenticated by the signature of the Under Secretary to the Government. However, the facts of the present writ petitions are quite different. In the present case, the impugned order though has been signed by the Additional Secretary of the Department, but the same has not been expressed in the name of the Governor, as is done normally in the case of policy decision of

the Government. The first resolution (Resolution No. 2020 dated 24.10.2014) and the third resolution (Resolution No. xx dated 14.10.2022) have been issued in the name of His Excellency, the Governor of Jharkhand, but the second resolution (Resolution No. 1777 dated 2106.2018), which snatched away the accrued rights of the employees, has been issued not in the name of His Excellency, the Governor of Jharkhand and it was issued under the pen and signature of the Additional Secretary of the Department. Thus, these propositions of law help the petitioners and are against the respondents.

27. Further argument of the learned Addl. Advocate General that the petitioners are not Government servants and they are not entitled for pensionery benefits is also misplaced for the reason that by the Resolution No. 2020 dated 24.10.2014, the employees of Madarsa and Sanskrit schools were extended the pensionery benefits treating them at par with Government employees and even by the last resolution i.e. Resolution No. 2666 dated 14.10.2022, they were treated as Government servant and were extended the benefits alike. This Court fails to understand that as to how for a particular period, it can be said taking benefit of Rule 58 of the Pension Rules that the employees of Madarsas and Sanskrit are not the Government servants. Even the State Government has considered the employees of minority schools and colleges like the Government servants and extended the pensionery benefits. This legal argument of the learned Addl. Advocate General is not attracted in this case and the same is totally misplaced.

28. The argument advanced by the learned Addl. Advocate General that the impugned resolution dated 21.06.2018 is a policy decision of the Government and the same is exclusive domain of the State as such, the same is immune to challenge in a writ Court, is not acceptable to this Court, this is so because that even if a policy decision is challenged on the ground of arbitrariness and the same is amenable to the writ jurisdiction under Article 226 of the Constitution of India. Normally, the High Court should not interfere in the policy decision of the State, which is admittedly the exclusive domain of the State, but the Court sitting under Article 226 of the Constitution of India cannot close its eyes when the policy decision itself is illegal and arbitrary, affecting the fundamental rights of citizens. Herein, admittedly, the impugned resolution is not expressed in the name of the Governor of the Jharkhand and hence, in any way, it can be said that it is not a policy decision, and the same can very well be amenable to this Court sitting under Article 226 of this Constitution of India.

29. Further, the contention of learned Addl. Advocate General that Rules of Business is always directory and not mandatory is also not accepted to this Court. Rules of Business have been framed under Articles 166(3) and 77(3) of the Constitution of India. When Rules of Business is mandatory and when it is directory, the Hon'ble Apex Court in the case of ***Narmada Bacho Andolan Vs. State of Madhya Pradesh & Ors***., reported in **(2011) 12 SCC 333** held that "*compliance of rules having financial implication is mandatory whereas the compliance of rules not having financial implication is directory*". In the instant case, it can safely be construed that the impugned resolution is having financial implication and as such, it is mandatory.

30. It is also not in dispute that the resolution no. 2020 dated 24.10.2014 came after the retirement of the petitioners. When prior to retirement, they were convinced that they will be getting the retiral benefits in view of the Resolution dated 24.10.2014 and they were made to retire at the age of 60 years i.e. prior to their actual date of retirement at the age of 62 years before coming into force of Resolution dated 24.10.2022, the impugned resolution dated 1773 dated 21.06.2018 cannot be given effect to which affects the legitimate expectation of the employees and, thus, the protectable interest of the employees comes to rescue. Inference can be drawn that in view of legitimate expectation and protectable interest of the employees, the impugned order is fit to be quashed and set aside, as the same is not tenable in the eye of law.

Conclusion

31. In view of the discussions made above, this Court holds that the earlier Resolution No. 2020 dated 24.10.2014 was a conscious decision of the State Government and the same was issued in accordance with law, whereas the impugned Resolution No. 1773 dated 21.06.2018 is absolutely illegal, arbitrary and unconstitutional. Hence, the Resolution No. 1773 dated 21.06.2018 is hereby quashed and set aside. The petitioners are entitled for pensionery benefits and gratuity. The respondents are required to calculate the pensionery benefits including gratuity as well as consequential benefits and the same be paid to the petitioners within a period of three months from today.

32. All these writ petitions succeed and they are allowed accordingly.