

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9018 OF 2013

(Arising out of S.L.P. (Civil) No. 13072 of 2006)

The Chief Secretary, Government of Bihar  
and others ... Appellants

versus

Madheshwar Dhari Singh (Dead)  
through LRs and others ...  
Respondents

WITH

CIVIL APPEAL NO. 9019 OF 2013

(Arising out of S.L.P. (Civil) No. 21009 of 2006)

WITH

CIVIL APPEAL NO. 9021 OF 2013

(Arising out of S.L.P. (Civil) No. 21455 of 2006)

WITH

CIVIL APPEAL NO. 9022 OF 2013

(Arising out of S.L.P. (Civil) No. 5202 of 2007)

WITH

CIVIL APPEAL NO. 9024 OF 2013

(Arising out of S.L.P. (Civil) No. 6160 of 2007)

WITH

CIVIL APPEAL NO. 9025 OF 2013

(Arising out of S.L.P. (Civil) No. 1237 of 2008)

WITH

CIVIL APPEAL NO. 9026 OF 2013

(Arising out of S.L.P. (Civil) No. 19535 of 2008)

WITH

CIVIL APPEAL NO. 9027 OF 2013

(Arising out of S.L.P. (Civil) No. 11176 of 2009)

WITH

CIVIL APPEAL NO. 9028 OF 2013

(Arising out of S.L.P. (Civil) No. 25548 of 2010)

JUDGMENT

**ORDER**

Leave granted in all the special leave petitions.

2. Regard being had to the commonality of the issue involved in this batch of appeals, they were heard together

and are disposed of by a singular order. For the sake of convenience we shall take the facts from the Civil Appeal arising out of Special Leave Petition (C) No. 13072 of 2006.

3. The respondents knocked at the doors of the High Court of Jharkhand for issue of an appropriate writ directing the respondents therein not to act on the guidelines contained in letter No. 28/43/2004-SRS dated 29.3.2005 and further to allow them to continue in service of the State till they attain the age of sixty years and to pay them salary of the intervening period. The question that was involved before the High Court was whether the Government servants, who were provisionally allocated and posted under the State of Jharkhand and attained the age of 58 years between 26.10.2004 and 23.3.2005 and finally their services were allocated to the State of Bihar on the basis of Bihar Reorganisation Act, 2000 (for short "the 2000 Act"), should be allowed to continue in the service till they attain the age of sixty years. The High Court referred to the fact-situation, the prescription of age, the notification issued by the Central Government under Section 72(2) of the 2000 Act, the final

allocation of service and the notification No. 28/43/2004-SRS dated 29.3.2005 and thereafter reproduced the said notification which gave rise to the controversy. It reads as follows: -

“No. 28/43/2004-SRS

Government of India  
Ministry of Personnel, P.G. and Pensions  
Department of Personnel and Training

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Lok Nayak Bhawan, Khan Market,  
New Delhi, the 19<sup>th</sup> March, 2005.

To  
The Chief Secretary,  
Government of Bihar,  
Patna

The Chief Secretary,  
Government of Jharkhand,  
Ranchi.

The State Advisory Committee, Bihar is in the process of allocation of State Service Personnel between the successor State of Bihar/Jharkhand. In the meantime, Government of Jharkhand has raised the age of superannuation from 58 to 60 years vide their notification dated 26.10.2004 whereas the Govt. of Bihar has raised the age of superannuation for its employees vide notification on 24.3.2005.

Keeping in view the overall situation, the matter has been examined and the undersigned is directed to advise that

- (a) those personnel who are posted in the State of Jharkhand and have attained the age of 58 years between 26.10.2004 and 23.03.2005 have been allocated to the State of Bihar, will be treated as superannuated on the day of attaining the age of 58 years and they will get their pensionary/retiral benefits from the successor State of Bihar.
- (b) those personnel who are posted in Bihar and have attained the age of 58 years on or after 26.10.2004 and have retired but allocated to the successor State of Jharkhand will resume their duty/post in the State of Jharkhand and they will get salary from State of Jharkhand w.e.f. the date of assuming the charge and their service will be counted in continuity for the purpose of pensionary/retiral benefits but they will not get any salary for the period for which they have not worked due to their retirement in the State of Bihar; and
- (c) all those personnel who have completed 58 years of age on or after 26.10.2004 may be provisionally relieved to the respective successor State of recommended in the Revised Final Allocation list pending their final allocation by the Central Government if no representation has been received against their proposed allocation;

It is requested that the action taken in the matter may kindly be intimated to the Central Government immediately.

Yours faithfully,  
Sd/- (A.K. Srivastava)  
Desk Officer

Copy to the Chairman, State Advisory Committee, Sichai Awas, 21 Beli Road, Patna for information action with reference to their letter No.Ra.Pa.Sa. 16/2004/106 dated 25.02.2005”

4. The High Court referred to the order passed by it earlier in Writ Petition (S) No. 1354 of 2005 and taking note of the decision in **Brahmadeo Prasad Yadav v. State of Jharkhand**<sup>1</sup> did not agree with the classification made by the Union of India and, in that context, stated thus: -

“It could be seen from the guidelines, dated 29<sup>th</sup> March, 2005 that the Central Government issued two types of directions in respect to employees who attained age of 58 years in between 26<sup>th</sup> October, 2004 and 23<sup>rd</sup> March, 2005. Those personnel who were posted in the State of Jharkhand and have attained the age of 58 years between 26<sup>th</sup> October, 2004 and 23<sup>rd</sup> March, 2005, get the benefit of amended Rule 73 of State of Jharkhand since 26<sup>th</sup> October, 2004, having been allocated to the State of Bihar, were treated as superannuated on the day of attaining the age of 58 years. On the other hand, those personnel who were posted in Bihar and had attained the age of 58 years on or after 26<sup>th</sup> October, 2004 and had actually retired, but they having allocated to the successor State of Jharkhand were allowed to resume their duty/post in the State of Jharkhand after their retirement.

The Central Government has failed to show any nexus in making classification amongst two similarly situated personnel in the matter of age of

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<sup>1</sup> 2005 (4) J.L.J.R. 185

retirement, though the burden was with the Central Government to show the reasonable classification and its nexus with the object of legislation, but it failed to discharge its burden. We, accordingly, hold clause (a) of paragraph '2' to the guidelines dated 29th March, 2005 as arbitrary, having no nexus with the object to achieve."

5. After so holding the High Court opined that in the matter of cadre allocation the employees had no say and, therefore, the guidelines issued on 29.3.2005 should not be allowed to work to their detriment and, accordingly, directed that the State of Bihar should retain them in service till the age of 60 years and to pay full salary as they were forced to remain out of service.

6. We have heard Mr. Manish Kumar, learned counsel for the appellants and Mr. Nagendra Rai, learned senior counsel appearing for the respondents.

7. In course of hearing Mr. Manish Kumar, learned counsel appearing for the State of Bihar, submitted that the respondents had worked in State of Jharkhand and drawn salary after obtaining 58 years of age which was then the

prescribed age of retirement in the State of Bihar and, therefore, the direction of the High Court is erroneous. It is further submission that in the peculiar circumstances the decision was rendered by the Union of India and the High Court should not have opined that the classification was not justified.

8. Mr. Nagendra Rai, learned senior counsel appearing for the respondents, supported the order passed by the High Court.

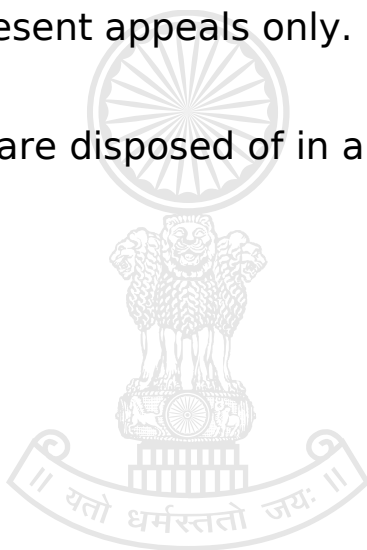
9. Having heard learned counsel for the parties we think that the cause of justice would be best subserved by issuing following directions: -

- (i) The respondents shall get continuity of service till they attained the age of 60 years and their pension shall be accordingly fixed.
- (ii) As far as arrears are concerned, the amount they have received while continuing in service after the age of 58 years in the State of Jharkhand should be deducted.
- (iii) After deduction of the said sum, the arrears shall be computed for the rest of the period and 20% of that

sum shall be paid to the respondent-employees within three months. The respondents shall not be entitled to any interest thereon.

10. We may hasten to add that we have passed the aforesaid order keeping in view the special features of the case and the present order shall stand restricted to the respondents in present appeals only.

11. The appeals are disposed of in above terms without any order as to costs.



.....J.  
[Anil R. Dave]

.....J.  
[Dipak Misra]

JUDGMENT

New Delhi;  
October 01, 2013.