(2006) 03 JH CK 0012

In the Jharkhand High Court

Case No : Writ Petition (S) No''s. 4887, 4889, 5092, 5138, 5153, 5407, 5408, 5470, 5886, 5913, 5932, 5942, 5956 and 6086 of 2005

Akhileshwar Prasad and Others — APPELLANT

Vs

Jharkhand State Electricity Board and Others
 Ram Lawlin Singh and Another Vs Bihar State Electricity and Others — RESPONDENT

Date of Decision : 31-03-2006

Acts Referred:
Bihar Reorganisation Act, 2000 — Section 3, 53, 62, 62(3), 62(4)

Citation : (2006) 2 JCR 418

Hon'ble Judges : S.J. Mukhopadhaya, J;Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : S. Srivastava and D.K. Lal, in W.P. S Nos. 4487, 5407 and 5408/2005, Anil Kumar and Satish Keshari, in W.P. S No. 4889/2005, Vijay Kumar Gupta, in W.P. S No. 5470/2005, A.K. Prasad and J.S. Pasari, W.P. S No. 5913/2005, Sunil Kumar, in W.P. S No. 5932, 5942 and 5956/2005, Mukesh Kr. Sinha, Rahul Kumar and V.K. Gupta, in W.P. S No. 6086/2005, Vijoy Pratap Singh, Ashok Kumar Sinha and Lakshmi Murmu, in W.P. S No. 5092, 5138 and 5153/2005 and K.K. Jha ''Kamal'' and B.N.J. Prabhakar, in W.P. S No. 5886/2005, for the Appellant; A.K. Sinha and M.K. Jha, R. Krishna, A.K. Jha and Siddhartha Ranjan, in W.P. (S) Nos. 4487 and 6086/2005 and Anil Kr. Sinha R. Krishna and Siddhartha Ranjan, in W.P. (S) Nos. 4889, 5092, 5138, 5153, 5407, 5408, 5470, 5886, 5913, 5932, 5942 and 5956, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The petitioners of all the abovementioned writ petitions were in the service of the erstwhile Bihar State Electricity Board, Patna (hereinafter to be referred as ''Erstwhile State Electricity Board1). They retired prior to creation of Jharkhand State Electricity Board, Ranchi (hereinafter to be referred as (J.S.E.B.) and present Bihar State Electricity Board, Patna (hereinafter to be referred as ''B.S.E.B.'') i.e. prior to ''1st April, 2001. They had been getting their pensions after retirement but after the creation of the said separate Board i.e. J.S.E.B. and ''B.S.E.B., payments or pensions have been suddenly stopped since June, 2005. The two Boards are now passing buck on one another for the financial liability to be born in paying previous and other dues of the petitioners. However, both the Board have admitted that the petitioners are entitled to get pension and other benefits as they are retired employees of the erstwhile State Electricity Board. The only dispute is regarding liability of payments of the dues and pensions of the petitioners, which they respectively deny and which ultimately culminated into the stoppage of pension of the petitioners leaving them to lurches in their old age.

2. Taking into consideration the aforesaid background, all the case were heard together and are being disposed of by this common order at the admission stage itself with the consent of the parties.

3. For determination of the issues involved in these cases, it was first relevant to know as to whether the liabilities of erstwhile State Electricity Board has been finally apportioned between the two Boards. Nobody could clearly answer as to whether the assets and liabilities have been finally apportioned between the two Electricity Board. While both of them accept that final notification for apportionment of assets and liabilities has been issued by the Central Government, it was argued that the apportionment in respect of some of the liabilities is not final, particularly staff payment liabilities and current liabilities, including the one in question are to be apportioned between the B.S.E.B. and J.S.E.B. after each financial year, which may take about 30 to 35 years. Lengthy arguments have been advanced on behalf of the parties relating to apportionment of assets and liabilities, but we are concerned with the main issue, involved in these cases, namely:

Which Board i.e. Bihar State Electricity Board Patna (B.S.E.B.) or Jharkhand State Electricity Board, Ranchi (J.S.E.B.) is liable to pay pension and other benefits to the employees, who retired from the services of the erstwhile State Electricity Board prior to 1st April, 2001?

4. We are told that a suit is pending before the Supreme Court, involving inter State dispute regarding apportioned of assets and liabilities of the erstwhile State Electricity Board and it was suggested to await the final decision in the said suit. But in view of the nature of plight of the petitioners, who are put to starvation and penury by stopping their pension, and the issue being "who is liable to pay pension", this decision is being rendered, subject to final decision and decree of the Supreme Court in regard to apportionment of assets and liabilities.

5. Before proceedings to decide the issue, it is necessary to notice the relevant facts of each case; relevant circulars and orders issued from time to time by the Central Government, B.S.E.B., J.S.E.B. etc. and the provisions of the Bihar Re-organization Act, 2000 (hereinafter to be referred as the ''Act, 2000'').

Individual case of the writ petitloner(s):

6. W.P.(S) No. 4887 of 2005 : Ak-hileshwar Prasad, petitioner in the present case, was in the services of the erstwhile State Electricity Board and retired on 31st of January, 2001 as Electrical Executive Engineer from M.R.T. Division, Ranchi. His pension was finalized by the erstwhile Board and he received that same till May, 2005. Since June, 2005 he is not getting pension. He received letter No. 2842 dated 4th August, 2005 from the B.S.E.B. that his pension papers have been transferred to the J.S.E.B. for payment and the J.S.E.B. is not accepting the liability. He has prayed for a direction on the respondents to pay his pension, due since June, 2005 and has also prayed for the arrears of salary on revision of pay for the period from 1st April, 1997 to 31st January, 2001, which has not been paid.

7. W.P. (S) No. 4889 of 2005 : Yogendra Lal, petitioner in this case, was also in the services of the erstwhile State Electricity Board retired on 1st November, 1997 as Assistant Electrical Engineer from Electric Supply Circle, Ranchi. He was also getting pension till May, 2005 but it was stopped since June, 2005 in view of letter No. 2922 dated 9th August, 2005 issued by the B.S.E.B., whereby, it was informed that his pension papers have been forwarded to the J.S.E.B. for payment but the J.S.E.B. is not accepting the liability. He has prayed for a direction on the respondents to pay him pension from June, 2005; arrears of salary due on revision of pay for the period from 1st April, 1997 to 31st October, 1997; arrears of gratuity due on revision of pay and the arrears of dearness allowance.

8. W.P. (S) No. 5092 of 2005 : Basant Kumar and Sakaldeo Prasad Singh, petitioners in the instant writ petition, were in the services of the erstwhile State Electricity Board. Basant Kumar retired on 31st March. 2001 as Electrical Executive Engineer from Ranchi whereas Sakaldeo Singh retired on 31st September, 1998 as Assistant Electrical Engineer from Ranchi. 1st petitioner Basant Kumar after retirement having not received the pensionery benefits had to move before this Court in W.P. (S) No. 1787 of 2003, which was disposed of on 24 th September, 2003. Thereafter, he was paid pension and other benefits. Since June, 2005 both these petitioners are not getting pension like other petitioners and, as such; they have prayed for a direction on the respondents to pay them the pension from June 2005 as also the arrears of salary on revision of pay and the difference of arrears of gratuity payable on revision of pay.

9. W.P. (S) No. 5138 of 2005 : There are ten petitioners in the present writ petition, all of whom were in the services of the erstwhile State Electricity Board and retired much prior to 1st April, 2001. The places from which they retired now fall within the territory of the State of Jharkhand, details of which are given hereunder:

-- SI. Name of the Date of Designation/Place of No. petitioner retirement retirement --- 1. Annam Raju 30.09.1990 Chief Engineer Mahadeva Rao (Training), Patratu @ A.R. Mahadeva Thermal

Power Station, Rao Patratu 2. Shamsher Singh 31.07.1992 Chief Engineer, Dhanbad Rekhi Area Electricity Board 3. Upendra Mohan 30.11.1994 Electrical Superintending Sinha Engineer, Ranchi Area Electricity Board, Ranchi 4. Braj Bhushan 31.08.1995 Chief Engineer (C.C.), Sinha Area Electricity Board, Ranchi 5. Uday Prakash 28.02.1996 Electrical Superintending Sinha Engineer, P.T.P.S., Patratu 6. Bishwanath 30.06.1997 Chief Engineer, Area Singh Electricity Board, Ranchi 7. Sanjay Kumar 30.6.1997 Electrical Superintending Sinha Engineer, Electric Supply Circle, Sijua, Jharia (Loyabad), Dhanbad 8. Ajay Kumar 30.6.1998 Chief Engineer, Area Singh Electricity Board, Ranchi 9. Basu Prasad 31.01.2000 Assistant Electrical Engineer, Supply Sub- Division, Barhi at Hazaribagh 10. Laxmi Narayan 31.07.2000 Assistant Electrical Singh Engineer, Ratu Board, Ranchi --

10. The aforesaid petitioners, several of them aged more than 65 years of age, were getting pension, but the same was stopped since June, 2005 as the successor B.S.E.B. and J.S.E.B. are disputing their liability of payment and shifting the same to the other. The petitioners, as such have prayed for a direction on the respondents to pay them the pension, which is due since June, 2005 onwards as also arrears of salary due on revision of pay; arrears of difference of gratuity and pension, payable on revision of pay, etc.

11. W.P. (S) No. 5153 of 2005 : There are five petitioners in this writ petition. All of them were in the services of the erstwhile State Electricity Board and retired prior to 1st April, 2001. from the offices which now fall within the territory of Jharkhand. Their relevant details are shown in the following table

-- SI. Name of the Date of Designation/Place No. petitioner retirement retirement -- 1. Jagarnath Mish- 31.07.1998 Accountant, Electric ra Supply Circle, Gumla 2. Diwakar Mishra 31.12.1999 Superintending Engineer, Electric Supply Circle, Jamshedpur 3. Dila Ram Yadav 31.01.2000 Assistant Electrical Engineer, Electric Supply Sub- Division, Adityapur-2 4. Shambhu Nath 31.07.2000 Electrical Executive Jha Engineer, P.T.P.S., Patratu, Hazaribagh 5. Laxman Prasad 31.01.2001 Assistant Electrical Sinha Engineer, Anti Power Theft, Singhbhum Area, Jamshedpur --

12. The aforesaid petitioners were also getting pension, which has been stopped since June, 2005 and, as such, they have also prayed for a direction on the respondents to pay them the pension for the period from June, 2005 onwards as also the arrears to which they are entitled on revision of pay.

13. W.P. (S) No. 5407 of 2005 : Shyam Sundar Prasad, petitioner in the present case, retired from the services of the erstwhile State Electricity Board on 31 January, 2001 as Electrical Executive Engineer, Electric Supply Division, Khunti, District-Ranchi (Jharkhand). He has prayed for a direction on the respondents to pay him the pension from June 2005 onwards, which was stopped since then.

Further prayer has been made to direct the respondents to pay him the arrears of salary on revision of pay for the period from 1st April, 1997 to 31st October, 2000; arrears of pension due on such revision for the period from February, 2001 to August, 2001; gratuity, amounting to Rs. 1.58,984/-already sanctioned vide letter No. 1520, dated 26th July, 2001; leave encashment and the amount, to which he is entitled toward Group Saving Scheme (hereinafter to be referred as ''G.S.S.''). He was also getting pension but by letter No. 2822, dated 4th August, 2005 of the B.S.E.B. it was informed that his pension papers have been forwarded to the J.S.E.B. for payment but the J.S.E.B. is disputing the liability.

14. W.P. (S) No. 5408 of 2005 : The, case of this petitioner Arun Singh is almost similar. He retired from the services of the erstwhile State Electricity Board on 30th November, 1999 as Assistant Electrical Engineer (Current Charge) from Electric Supply Sub-division, Jamua, District Giridih (Jharkhand). His pension was sanction vide P.P.O. No. 1884. dated 29th November 1999 and since thereafter he was getting his pension till May 2005, which was stopped after issuance of letter No. 2820, dated 4th August, 2005 whereby the B.S.E.B. has informed that his pension papers have been forwarded to the J.S.E.B. for payment in his favour. The J.S.E.B., on the other hand, is disputing the liability. He has prayed for a direction on the respondents to pay him the pension due since June 2005 onwards; arrears of salary on account of revision of pay for the period from 1st April, 1997 to 30th November, 1999; arrears of pension on account of revision of pay for the period from December 1991 to 2001 and gratuity to the tune of Rs. 1,60,429.50 paise, sanctioned vide letter No. 2549, dated 15th October, 2001 by B.S.E.B.

15. W.P. (S) No. 5470 of 2005 : Rajesh-war Prasad Singh, who is petitioner in the instant writ petition, retired from the services of the erstwhile State Electricity Board on 30th January, 2001 as Electrical Superintending Engineer from Loyabad Circle, Dhanbad (Jharkhand). He was paid pension upto May 2005 but the same was stopped since June, 2005 as B.S.E.B. has issued letter No. 2643, dated 23rd July, 2005, informing him that his pension papers have been forwarded to the J.S.E.B. for payment but the J.S.E.B. is disputing the liability. He has prayed for a direction on the respondents to pay him pension due since June 2005 onwards; arrears of salary due on revision of pay as also arrears of gratuity and leave encashment due on such revision.

16. W.P. (S) No. 5886 of 2005 : There are two petitioners in this writ petition, namely, Ram Lolin Singh (1st petitioner), who retired from the service of the erstwhile State Electricity Board on 31st October, 2001 as General Manager-cum-Chief Engineer, Electric Supply Area, Ranchi (Jharkhand), whereas Tapeshwar Singh (2nd petitioner) retired on 1st February, 1999 from the services of the State Electricity Board as Assistant Electrical Engineer, Electric Supply Sub-division, Sahebganj (Jharkhand). By letter Nos. 2882 and 2834 both dated 4th: August, 2005 there petitioner have been informed by the B.S.E.B. that their pension papers have been forwarded to the J.S.E.B. for payment of pension. As

the J.S.E.B. is disputed the liability, they have not received pension since June, 2005, which they were getting earlier. They have prayed for a direction on the respondents to pay them the pension for the period from June 2005 onwards; arrears of salary due on revision of pay as also the arrears of gratuity and leave encashment due on such revision.

17. W.P. (S) No. 5913 of 2005 : Amar Nath Ojha, the sole petitioner in the instant writ petition, was in the services of the erstwhile State Electricity Board and retired on 1st January, 1994 from the post of Electrical Executive Engineer, Electric Supply Division, Nirsa, District-Dhanbad (Jharkhand). He was getting pension, which was stopped since June 2005, since by letter No. 2967, dated 29th August, 2005 he was informed by the B.S.E.B. that his pension papers have been forwarded to the J.S.E.B. for payment but the J.S.E.B. is not accepting the liability. This petitioner has prayed for a direction on the respondents to pay him the pension due since June 2005 onwards as also all the arrears and consequential benefits, which he is entitled to get on revision on pay.

18. W.P. (S) No. 5932 of 2005 : Ram Ujagir Singh Rana, petitioner in this case, who retired on 31st December, 1999 from the services of the erstwhile State Electricity Board from the post of Unit Control Engineer, P.T.P.S., Patratu (Jharkhand), was getting pension in the old scale of pay. He requested for payment of pension in the revised pay but was not paid. He has prayed for a direction on the respondents to pay him the full retiral benefits as also the other benefits, such as, gratuity, pension and arrears of salary to which he is entitled after the pay revision of the employees.

19. W.P. (S) No. 5941 of 2005 : Krishna Mohan Srivastava, sole petitioner in the present writ petition, retired from the services of the erstwhile State Electricity Board from the post of Superintending Engineer, P.T.P.S., Patratu (Jharkhand). He has prayed for a direction on the respondents to pay him the arrears of gratuity on revision of pay, arrears of leave encashment due on such revision; arrears of salary due on such revision for the period from 1st April, 1997 to 30th June, 1998 and the arrears of pension for the period from 1st July, 1993 to 30th April, 1991. This petitioners was also getting pension but it was stopped since June 2005 as the B.S.E.B. has informed him that his pension papers have been forwarded to the J.S.E.B. for payment whereas the J.S.E.B. is disputing the liability of such payment.

20. W.P. (S) No. 5956 of 2005 : Satya Narayan Mittal, petitioner in present writ petitioner, was in the services, of the erstwhile State Electricity Board and had retired on 31st January, 1999 from the post of Chief Chemist. P.T.P.S. Patratu (Jharkhand). He has prayed for a direction on the respondents to pay him the arrears of gratuity and leave encashment in the revised scale of pay, arrears of salary due on such revision for the period from 1st April, 1997 to 21st January, 1999 and the difference of pension for the period from 1st June, 1998 to 30th April, 2001. Like other petitioners, this petitioner was also getting pension but was stopped since June 2005 after the B.S.E.B. informed him that his pension

papers have been forwarded to the J.S.E.B. for payment whereas the J.S.E.B. is disputing the liability of such payment.

21. W.P. (S) No. 6086 of 2005 : Ramji Prasad Singh, petitioner in the instant writ petition, who was also in the service of the erstwhile State Electricity Board, retired on 31st January, 2000 as Head Clerk, P.T.P.S., Patratu (Jharkhand). He was getting his pension but it was stopped since June 2005 due to dispute ofliability between the two successor Boards. He has prayed for a direction on the respondents to pay him the arrears of pension for the period from June 2005 onwards; balance of pension, full gratuity, full leave encashment, remaining 10% of pension for the period of 1st February, 2000 in the revised scale and the arrears of salary due on revision of pay.

Other relevant facts and circulars/guidelines:

22. After the enactment of the Bihar Re-organization Act, 2000, the erstwhile States of Bihar was reorganized and two successor State of Bihar and Jharkhand came in existence on 15th November, 2000. The State of Jharkhand, in exercise of powers conferred under Sub-section (4) to Section 62 of the Re-organization Act, 2000, issued Notification No. 26 dated 10th January, 2001, constituting Jharkhand State Electricity Board (J.S.E.B.) with effect from 10th January, 2001, though no notification was issued by the Central Government. A meeting of high level officials of Government of Bihar and Government of Jharkhand was held on 5th March, 2000, wherein they discussed the modalities of division of the assets and liabilities of the erstwhile State Electricity Board. The Central Government, in exercise of powers, conferred under clause (a) to Sub-section (4) of Section 62 of the Reorganization Act, 2000, issued Office Order No. 42/9/2000/-R & R, dated 22nd March, 2001, provisionally apportioning the assets and liabilities between the two successor Boards with effect from 1st April, 2001. No formal notification was issued by the Central Government under Sub-section (3) of Section 62, fixing any appointed day. The assets and liabilities having been provisionally apportioned with effect from 1st April, 2001 and the J.S.E.B. having come into existence, a question arose as to which Board i.e. B.S.E.B. or J.S.E.B. will sanction and pay the retiral benefits to the employees of the erstwhile State Electricity Board, who retired from the territory of Jharkhand prior to 1st April, 2001 but neither sanction order has been issued nor payment has been made. Number of writ petitions were preferred by the retired employees, who were not getting retiral benefits, both before Jharkhand High Court and Patna High Court. Individual order for payment were issued in different cases, subject to future appointment of the assets and liabilities.

23. In Jhabbu Pandit v. J.S.E.B. and analogous cases, reported in 2002 (2) JCR 372(jhr), a Single Judge of this Court, having noticed the relevant facts, held that the employees, who retired from the offices, which fall within the territory of Jharkhand i.e. within the jurisdiction of J.S.E.B., are entitled to received benefits from the J.S.E.B. and those, retired from the offices, now fall within the territory of the State of Bihar, will be paid the benefits by the B.S.E.B., irrespective of the

appointed day. The said judgment has been challenged by the J.S.E.B. in L.P.A. No. 355 of 2002 and other case, wherein, certain interim order has been passed making it applicable only to the writ petitioners of the said case. The appeal is still pending.

24. In a similar case of S.M. Abdul Quadir and Others Vs. Bihar State Electricity Board and Others, , Patna High Court was also of the similar view and held that till liabilities are finally determined, it will be equitable that the respective Board should pay the pen-sionery dues and arrears to the employees, retired/retiring from the area, now falling under the jurisdiction, subject to final accounting/ adjustment of their liabilities. Against the said judgment, J.S.E.B. moved before the Supreme Court in Civil Appeal No. 1652 of 2004 J.S.E.B. v. B.S.E.B. and Ors., which was made analogous to Civil Appeal No. 1651 of 2004.

25. In the meantime, when contempt proceedings were initiated by this Court for non-compliance of certain orders, both the J.S.E.B. and B.S.E.B. held a meeting on 27th December, 2003 and reached to an agreement, circulated vide Memo No. 191/S, dated 27th December, 2003, relevant portion of which is quoted hereunder:

It was agreed that both the successor State Electricity Boards i.e. successor Bihar State Electricity Board and successor Jharkhand State Electricity Board will pay retiral benefits to the employees who have retired from the present territorial jurisdiction of the successor SEB''s irrespective of their date of retirement.

This will be a temporary arrangement till and subject to the final division of assets and liabilities between the two Boards by the competent authority. This agreement will also be without prejudice to the outcome of the SLP filed by the J.S.E.B. in the Hon''ble Supreme Court in J.S.E.B. v. Abdul Quadir and LPA filed by B.S.E.B. in the Hon''ble High Court, Ranchi in the case of B.S.E.B. v. Jhabbu Pandit and Ors.

This tentative agreement is being made as per the direction dated 12.12.2003 of Hon''ble High Court of Jharkhand, Ranchi in W.P. (S) 2272/2003 and 3317/2003 alongwith Contempt Case Nos, 998/2002, 562/2002 and 659/2003.

It was agreed that this tentative decision will be submitted by both the parties in these cases on the next date of hearing fixed on 23rd January, 2004 and meanwhile, both the successor Board will start disposing of the pending cases as per this tentative agreement, giving priority to cases pending in the Hon''ble High Courts of Patna and Ranchi, and the case in which the compliance of orders of the both the Hon''ble High Courts as Patna and Ranchi are pending compliance.

2. It was agreed that for the employees who continued in CPF scheme and who have retired after 1.4.2001 or were working in the present territorial jurisdiction of J.S.E.B. on 1.4.2001 and are still in service or the employees who have retire prior to 1.4.2001 from the present territorial jurisdiction of JSEB, but whose final

payment of CPF was made by present J.S.E.B.-for all these cases the Regional CPF Trust will prepare the employees wise statement of balance in CPF Trust as on 31.3.2001 and will submit it to the Administrator, B.S.E.B. CPF Trust along with the statement of remittance and other documents, as required and B.S.E.B. CPF Trust will transfer the outstanding balance for these employees as on 31.3.2001 along with up-to-date interest to the J.S.E.B. CPF Trust whenever it is formally created or Regional CPF Trust of Ranchi, Patratu and Loyabad if the J.S.E.B. takes decision to the effect.

3. With respect to employees who switched from CPF to GPF on roll as on 1.4.2001, in the territorial jurisdiction of present J.S.E.B., the outstanding balance be calculated by both the successor boards, taking into account the withdrawals between 8.11.1987 and 31.3.2001, and shall be transferred to J.S.E.B. CPF Trust, whenever it is formally created.

4. It was agreed that implementation of paras 2 and 3 will be subject to the final decision of Regional Provident Fund Commissioner.

When Civil Appeal Nos. 1651 of 2004 and 1652 of 2004 were taken up by the Supreme Court on 19th August, 2004, J.S.E.B. and B.S.E.B. Informed that they have reached an agreement on 27th December, 2003 and having notice their submission, the Supreme Court disposed of both the appeals with the following directions:

Both these civil appeals are disposed of in view of the arrangement arrived at between the two contesting State Electricity Board as is evident from the minutes of discussion held on 27.12.2003. Copy of the minutes has been filed which shows that the terms of agreement arrived at in view of the arrangement entered into by the contesting Electricity Boards. Necessary follow up action shall be taken on the basis of the agreement entered into between the parties referred to above.

The agreement, reached between the J.S.E.B. and B.S.E.B. was communicated by the J.S.E.B. to its officers vide Order No. 81 dated 21st January, 2004 and its was ordered to pay pensionery benefits and other dues accordingly. Subsequently, the agreement was withdrawn by J.S.E.B. by letter No. 2995 dated 16th October, 2004 but having received a show cause notice in Contempt Case No. 11 of 2004, Vinay Kumar Pore v. J.S.E.B. and Ors. and analogous cases, the orders of recall was stayed on 14th March. 2005 and subsequently withdrawn vide Momo No. 725 dated 21st April, 2005. The agreement dated 27th December, 2003 was again restored.

In the meantime, the Central Government having noticed that various pensioners of Electricity Board were facing hardship, issued guidelines by letter No. 42/9/2000-R & R (Vol. IV). dated 6th January, 2004. The Boards were suggested to issue sanction orders from their respective Board, from whose jurisdiction the employee relinquished the office on account or retirement/death. For apportionment of liabilities they were asked to follow the guidelines, as enunciated in Eight Schedule of the Bihar Re-organization Act, 2000. The issue whether the said guideline dated 6th January, 2004, issued by the Central Government, relates to the employees, retired or died prior to the appointed day (1st April, 2001) or relates to those, who retired or died after the appointed day, will be discussed at appropriate stage.

The Central Government fixed 1st day of April, 2001 as the appointed day by Notification S.O. 1209 (E) dated 2nd November, 2004. It was followed by the notification, issued by the Central Government on 4th November, 2004 in exercise of the powers, conferred under Sub-section (iii) of Section 62 of the Bihar Reorganization Act, 2000. The assets, rights and liabilities of the erstwhile State Electricity Board was apportioned between the successor B.S.E.B. and J.S.E.B. and the order of provisional apportionment, issued on 22nd March, 2001, stood superseded. By Notification dated 4th November, 2004 whether the assets, liabilities rights and undertaking of the erstwhile State Electricity Board were finally apportioned or still provisions is another issue raised by the parties.

In fact, neither counsel for the B.S.E.B. nor the counsel for the J.S.E.B. addressed the Court on the query whether the notification dated 4th November, 2004 amounts to final appointment of assets, liabilities etc. According to the counsel for the B.S.E.B. pensionery liability has not been finally apportioned whereas according to the counsel for the J.S.E.B., though apportionment of many of the liabilities have not been made, appointment of pensionery liability has reached finality, subject to adjustment in terms of the Eighth Schedule of the Bihar Reorganization Act, 2000.

On perusal of the notification dated 4th November, 2004 it appears to be final in nature. By the said notification apportionment of assets, liabilities, rights and undertakings of the State Electricity Board, as was made on provisional basis by order dated 22nd March, 2001, was superseded. It cannot be presumed that one provisional apportionment order has been superseded by another provisional apportionment order. How the assets, liabilities, rights and undertakings are to be apportioned has been shown in the notification dated 4th November, 2004, which is quoted hereunder:

Government of India

Ministry of Power

New Delhi, the 4th November, 2004

NOTIFICATION

S.O.-Whereas by the notification of the Government of India in the Ministry of Power S.O. 1209(E), dated 2nd November, 2004 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated 2nd November, 2004 issued under Sub-section (3) of Section 62 of the Bihar Reorganization Act, 2000 (30 of 2000), the Central Government has appointed the 1st day of April, 2001 as the date on which the Bihar State Electricity Board will remain functional within the territory of successor State of Bihar.

2. And whereas no agreement between the successor States of Bihar and Jharkhand has been reached for apportionment of assets, rights and liabilities of the said Board, the Secretary (Power) held a meeting on 5th June, 2004 in which both the States have agreed to divide the assets on the basis of geographical nexus. There was no agreement on other issues.

3. Now, therefore, after duly considering the views of the successor State Governments and taking into account relevant factors, in exercise of powers conferred by Sub-section (3) of Section 62 of Bihar Reorganization Act, 2000 the Central Government hereby makes the following orders for the apportionment of the assets, rights and liabilities of the Bihar State Electricity Board between the successor Electricity Board of Bihar and Jharkhand namely :-

(i) Assets : The fixed assets are divided on the basis of geographical nexus.

(ii) Liabilities : Long term liabilities are divided in the ratio of fixed assets Ie. 67:33 (Bihar : Jharkhand).

(iii) Current assets and current liabilities : The apportionment of current assets and current liabilities shall be in the ratio of consumption of power Ie. 49.73 : 50.27 (Bihar : Jharkhand)

(iv) Allocation of staff, posts and staff related liabilities:

(a) The post and staff would be allocated on the basis of recommendations of the State Advisory Committee-Electricity Board (SAC-EB) set up vide Ministry of Power order No. 42/9.2000-R&R (Vol. IV), dated 6.1.2004.

(b) Staff related liabilities would be apportioned in accordance with the Ministry of Power letter No. 42/9/2000-R&R (Vol. IV), dated 6.1.2004.

4. Details of assets and liabilities (other than receivable payable to the State Government) apportioned in manner as stated in para 3 above is enclosed. Assets liabilities related to the State Government in relation to erstwhile B.S.E.B. are not required to be distributed as the net amount thereof is subsumed in the above distribution of assets and liabilities.

5. This order supercedes Ministry of Powers order, No. 42/9/2000-R&R, dated 22.3.2001, which apportioned the assets, liabilities, rights and undertakings of the B.S.E.B. on provisional basis.

According to the counsel for the B.S.E.B., pension is the "current liability", covered by sub-paragraph (ill) of Paragraph No. 3 of the said Notification dated 4th November, 2004. It is to be apportioned in the ratio of 49.73:50.27 between the Bihar and Jharkhand respectively. On the other hand; according to the counsel for the J.S.E.B., pension liability is covered by sub-paragraph (iv) of Paragraph No. 3 of the said Notification, to be apportioned in term with the guidelines, contained in Letter No, 42/9/2000-R&R (Vol. IV), dated 6th January, 2004, read with Eighth Scheduled of the Bihar Reorganization Act, 2000. It was submitted that as per Eighth Schedule, total liability of payment of pension is of the B.S.E.B.

Counsel for other the B.S.E.B. and J.S.E.B. placed reliance on the balance-sheet, attached to the Notification dated 4th November, 2004, including Schedules 20, 28, 31, 32 etc. and highlighted the amount, received by one or other Board on apportionment of assets. Counsel for the J.S.E.B. submitted that major amount of pensionery assets have been given to the B.S.E.B. and the liability to pay the pension is on the B.S.E.B. On the other hand, according to the counsel for the B.S.E.B., Schedule 25, while tails of Account Code 20.1 (Pension), relates to division of assets, cash in nature, investment of which has already been made and it does not relate to apportionment of liability of payment of pension.

However, in our considered opinion, the schedule, attached Notification dated 4th November, 2004 only relates to apportionment of assets, liabilities, rights etc. and it does not lay any guideline as to which Board will pay the pension other and benefits to the employees, who retired or died prior to the appointed day i.e. 1st April, 2001. Thus, the Schedule, attached to the letter dated 4th November, 2004 has no relevance.

So far as the guidelines, contained in Central Government''s letter No. 42/9/2000-R&R (Vol. IV), dated 6th January, , 2004 and Eighth Schedule of the Bihar Reorganization Act, 2000 are concerned, for proper appreciation, it is necessary to notice the relevant provision, as quoted hereunder:

No. 42/9/2000-R&R (Vol. IV) Government of India Ministry of Power

x x x x Shram Shakti Bhawan, Rafi Marg, New Delhi, dated 6th January, 2004

To

The Chief Secretary, Government of Bihar, Patna The Chief Secretary, Government of Jharkhand, Ranchi

Subject.-Sanction of pensionery benefits to the employees of the State Electricity Boards affected by the Bihar Reorganization Act, 2000.

Sir

The undersigned is directed say that after the reorganization of Bihar in accordance with the provisions of Bihar Reorganization Act, 2000, this Ministry has been receiving the grievances of hardships regarding the payment of pensionery benefits to State Electricity Board personnel, who have either expired or retired or are due retirement after the appointed day, but have not been finally allocated to service to any of the successor Electricity Board.

It is clarified u/s 62(5) of the Act that while normally pensionery benefits are to be sanctioned by the successor State Electricity Board to which a person is finally allocated to but in cases as above, the benefits have to be sanctioned by the successor Electricity Board from where the employee has relinquished the officer on account of retirement death. As regards apportionment of liability in respect of pensions, the same shall be guided by the arrangement enunciated in VIIIth Schedule of the Bihar Reorganization Act, 2000.

Yours faithfully, Sd/- (Alok Kumar) Director

From the subject matter of the aforesaid letter, it will be evidence that the same relates to sanction of pensionery benefits to the employees of the State Electricity Board, affected by the Bihar Reorganization Act, 2000 and it does not cover those retired employees, whose pension has already been sanctioned and are already getting pension. In the 1st paragraph it has been made clear that the Ministry had been receiving grievances of hardship regarding payment of pensionery benefits of the State Electricity Board personnel, who have either died to retired to due to retire after the appointed day (Emphasis added), which has been reiterated at 2nd Paragraph of the said letter.

The Eighth Schedule of the Bihar Reorganization Act, 2000 relates to apportionment of liabilities in respect of pension and other retirement benefits of the State Government employees, which was also made applicable by letter dated 6th January, 2004. The Eighth Schedule reads as follows:

THE EIGHTH SCHEDULE (See Section 53) APPORTIONMENT OF LIABILITY IN RESPECT OF PENSIONS AND OTHER RETIREMENT BENEFITS

1. 1. Subject to the adjustment mentioned in paragraph 3 each of the successor State shall in respect of pension and other retirement benefits sanctioned before the appointed date, pay from their respective treasuries.

2. Subject to the said adjustment, the liability in respect of pension and other retirement benefits of officer serving in connection with the affairs of the existing State of'' Bihar who retire or proceed on leave preparatory to retirement before the appointed day, but whose claims for pensions and other retirement benefits are outstanding immediately before that day shall be the liability of the State of Bihar.

3. Subject to the said adjustments, sanctions of such pension and other retirement benefits by the competent authority may be given in those cases, in which their office falls in the territory of Jharkhand State.

4. There shall be computed in respect of the period commencing on the appointed day and ending on the 31st day of March of that financial year and in respect of each subsequent financial year, the total payment made in the successor States in respect of pensions and other retirement benefits referred to in paragraphs 1 and 2. The total representing the liability of the existing State of Bihar in respect of pensions and other retirement benefits shall be apportioned between the successor States in the ratio of number of employees of each successor State and any successor State paying more than its due share shall be reimbursed the excess amount by the successor State or State paying less.

5. The liability of the existing State of Bihar in respect of pensions and other retirement benefits granted before the appointed day and drawn in any area outside the territories of the existing State shall be the liability of the State of Bihar paying subject to adjustment to be made in accordance with paragraph 3 as if such pensions and other retirement benefits had been drawn in any treasury in the State of Bihar under paragraph 1.

6. The liability in respect of the pensions and other retirement benefits of any officer serving immediately before the appointed day in connection with the affairs of the existing State of Bihar and retiring on or after that day, shall be that of the successor State granting him the pension and other retirement benefits, but the portion of the pension and other retirement benefits attributable to the service of any such officer before the appointed day in connection with the affairs of the existing State of Bihar shall be allocated between the successor States in the population ratio and the Government granting the pension and other retirement benefits shall be entitled to receive from each of the other successor State its share of this liability.

7. Any reference in this Schedule to a pension and other retirement benefits shall be construed as including a reference to the commuted value of the pension and other retirement benefits.

Admittedly, the employees of the State Electricity Board are not paid their salary or retiral benefits through any Treasury. The Headquarters of the State Electricity Board being at Patna, the Board used to deposit the amount in the bank accounts of the employees/retired employees individually, opened anywhere in the country. Many of the petitioners, who are from Uttar Pradesh, their pensionery benefits used to be deposited in the banks in Uttar Pradesh and those, who were within the territory of Bihar and Jharkhand, their pensionery benefits were to the deposited in their respective bank accounts, either in Bihar or in Jharkhand. Clause (i) of Eighth Schedule has, thus not verbatim application, though the principle, laid down therein, can be applied in the case of the retired employees of the State Electricity Board. On close reading of clause (i) of the Eighth Schedule it is evident that the intention of the legislature was that the person, who used to received the pension from a place and having settled there, will get his pension from that place. If this principle is made applicable to the retired employees of the erstwhile State Electricity Board, then the J.S.E.B. will be liable to pay pensionety benefits to the employees, who retired from the offices now fall within the territory of Jharkhand and B.S.E.B. will pay the retiral benefits to the employees of the erstwhile State Electricity Board, who retired from the offices, now fall within the territory of the State of Bihar. So far as appointment of liability is concerned, it can be made in the manner, as shown in the Eighth Schedule.

Apart from the fact that the guideline contained in letter dated 6th January, 2004, relates to the employees, retired of died after the appointed day, but not allocated any cadre, as submitted by the counsel for the B.S.E.B., the said guidelines dated 6th January, 2004 is dependant on notification dated 4th November, 2004.

So far as the notification dated 4th November, 2004 is concerned, it appears that both J.S.E.B. and B.S.E.B. are not satisfied with the direction, given therein and have raised objections. One suit being Suit No. 1 of 2005 has been instituted by the J.S.E.B. in the Supreme Court, challenging the legality and propriety of the notification dated 4th November, 2004, wherein the State of Jharkhand is the 1st. plaintiff and the J.S.E.B. is the 2nd plaintiff. In the said suit, besides the prayer for grant of permanent injunction against implementing the notification dated 4th November, 2004, relief has also been sought for declaring the said notification dated 4th November, 2004 illegal and ab initio void. Thus, it appears that even if this Court directed the Boards to act in terms with the notification dated 4th November, 2004 and the letter dated 6th January, 2004 the J.S.E.B. may face difficulty to act in terms of the Court''s order, in view of pendency of the suit inter alia already seeking a decree for permanent injunction against the said notification.

Similar is the position with the B.S.E.B. By Letter No. 731, dated 14th September, 2005, the B.S.E.B. has raised objection against the said notification dated 4th November, 2004 and has taken plea that the B.S.E.B. will face difficulty as the staff related liability of the erstwhile State Electricity Board has not been divided and the methodology. design and contents in Eighth Schedule is not workable in respect to the State Electricity Board and is extremely complex. It has further taken plea that complex process of adjustment will" lead to adjudication and adjustment for about next 30 to 35 years.

From the discussions aforesaid, the following modalities have earlier emerged as a solution to the controversy:

(i) As per the ratio, laid down by the Jharkhand High Court in the case of Jhabbu Pandit", reported in 2002 (2) JCR 372 (Jhr), an employee, who retired from the office, which falls within the territory of Jharkhand, is entitled to receive pensionery benefits from the J.S.E.B.;

(ii) As per Patna High Court''s decision in the case of S.M. Abdul Quadir and Others Vs. Bihar State Electricity Board and Others, the equitable formula is that the respective Board should pay the pensionery dues and arrears to the employees, retired/retiring from the areas, now fall under their jurisdiction, subject to final accounting/adjustment of their liabilities;

(iii) As per the agreement dated 27th December, 2003, reached between the J.S.E.B. and B.S.E.B., the successor B.S.E.B. and successor J.S.E.B. will pay the retiral benefits to the employees of erstwhile State Electricity Board, who have retired from the offices, which now fall within their respective territorial jurisdiction, irrespective of their dates of their dates of retirement;

(iv) As per the direction of the Supreme Court dated 19th August, 2004, passed in Civil Appeal Nos. 1651 of 2004 and 1652 of 2004, but J.S.E.B. and B.S.E.B. are to act on the basis of the agreement dated 27th December, 2003; and

(v) The J.S.E.B. vide order No. 81, dated 21st January, 2004 has also given the following directions:

Henceforth, the payment of retiral benefits of all such employees, who retired died from the territorial jurisdiction of Jharkhand, even prior to 15.11.2000, will be made by the Jharkhand State Electricity Board, disbursing officer will maintain separate accounting of the payments made, so that it can be adjusted at the time of final apportionment of assets and liabilities between the two Boards.

Having considered all the aspects and noticed the above modalities, we hold that the respective Boards should pay the pensionery dues and arrears to the employees, retired/retiring from the areas, now falling under their jurisdiction, subject to final accounting/adjustment of their liabilities. Such payment will be subject to the decision of the Supreme Court in Suit No. 1 of 2005 and subject to final apportionment/adjustment, as may be made in the beginning of the next financial year(s).

In the present case, all the petitioners having retired from the offices, now falling within the territorial jurisdiction of Jharkhand, J.S.E.B. will be liable to pay all their retiral benefits and other dues to which they are entitled. We, accordingly, direct the J.S.E.B. and its official to pay the petitioner immediately their ''current pension'' within fifteen days from the date of receipt/production of a copy of this order. So far as other dues, as claimed by the individual petitioners in their respective case, are concerned, the J.S.E.B. will decide the claim and will pay the admitted benefits to such petitioner (s), who are so entitled, within a period of four months from the date of receipt/production of a copy of this order. On failure, the respondents will be liable to pay interest at the rate of 5% per annum on the admitted dues from the date(s), the petitioner(s) are so entitled, and also a cost of Rs. 5.000/- to each of the petitioners. All the writ petitions are, thus, allowed with the aforesaid observations and directions.

Narendra Nath Tiwari, J.

26. I agree.

