(2020) 09 PAT CK 0112

In the Patna High Court

Case No : Letters Patent Appeal No. 78, 1612, 1294 Of 2012, Civil Writ Jurisdiction Case No. 8429 Of 2010, 15213, 14388 Of 2011

Ms.Shivani Chaudhary APPELLANT

Vs

Principal Secretary And Ors RESPONDENT

Date of Decision : 27-09-2020

Acts Referred:

Indian Penal Code, 1860 — Section 2, 21
Land Acquisition Act, 1894 — Section 6(1)
Reserve Bank Of India Act, 1934 — Section 7(2), 58, 58(1)
Bihar Service Code, 1952 — Rule 73
Constitution Of India, 1950 — Article 12, 309

Citation : (2020) 09 PAT CK 0112

Hon'ble Judges : Dinesh Kumar Singh, J;Prabhat Kumar Jha, J;Arvind Srivastava, J

Bench : Full Bench

Advocate : Mukul Sinha, Ajit Kumar, Niranjan Kumar, Lalit Kishore, Sajid Salim Khan, Girijesh Kumar, Avinash Kumar, Krishna Chandra, Rajesh Kumar, Nalin Vilochan Tiwary, Raisul Haque, Binay Kumar

Final Decision : Allowed

Judgement

We have heard Mr. Mukul Sinha, learned counsel for the appellant (in LPA No. 1294 of 2012), Mr. Rajesh Kumar, learned counsel for the appellant (in L.P.A. No.1612 of 2012) and Mr. Ajit Kumar, learned counsel for the appellant (in L.P.A. No. 78 of 2012), Mr. Lalit Kishore, learned Advocate General Bihar and Mr. Girijesh Kumar, learned counsel for the Corporation in all the cases.

The above mentioned three Letters Patent Appeals have been referred to a larger Bench vide order dated 31.10.2017 passed by a Division Bench of this Court in view of the conflicting views expressed by Division Bench of this Court. In LPA No. 1558 of 2011 (Namindra Singh Vs. The State of Bihar and Anr.) decided on 18.11.2011 and LPA No. 533 of 2014 (Budha Dev Biswas vs. The State of Bihar and Ors.) decided on 17.3.2017, whereby the claim of the employees of the

Bihar State Electronics Development Corporation Limited (hereinafter referred to as the Corporation) for enhancement of age of retirement from service has been rejected in view of the government decision and consequential amendment in Rule 73 of the Bihar Service Code (hereinafter referred to as the Code) and similar view has been taken by the Division Bench in LPA No. 1074 of 2014 (The State of Bihar through the Principal Secretary, Department of Industries & Ors.Vs. Chandra Bhushan Choudhary, reported in 2016 (1) PLJR 764 whereas a contrary view has been taken by another Division Bench in the case of Lala Nand Kumar & Ors. Vs. The Bihar State Food and Civil Supplies Corporation Ltd. & Ors, reported in 2008 (1) PLJR 579 with regard to the extension of age of retirement of the employees of the Bihar State Food Corporation in the light of the amendment under Rule 73 of the Code, allowing the age of superannuation from 58 years to 60 years. The reference order dated 31.10.2017 reads as follows:

"While hearing the matter today, two judgments of this Court passed by Division Benches in two appeals, one being L.P.A. No.1558 of 2011 decided on 18.11.2011 and another being L.P.A. No.533 of 2014 decided on 17.3.2017, have been brought to our notice by the learned Advocate General appearing for the Corporation to say that the appeal has to be dismissed and the enhanced age of superannuation, as incorporated by amendment in the Bihar Service Code, will not ipso facto apply to the employees of the Corporation and this contention of the Corporation has been upheld in the aforesaid two judgments.

However, learned Counsel for the appellants invites our attention to an earlier judgment by a Division Bench of this Court in the case of Lala Nand Kumar & Ors. Vs. The Bihar State Food & Civil Supplies Corporation Ltd. & Ors., 2008(1) P.L.J.R. 579, and takes us to the findings recorded in para 8 of the said judgment and the resolution of the Bihar State Food Corporation made on 21st of May 1973 which in the relevant extract reads as under:-

"Resolved that until such time as the Service Code, Financial Rules etc. are framed by the Corporation, provisions made in the Bihar Service Code ...... applicable to the State Government employees be adopted for the employees of the Corporation."

He invites our attention to the resolution passed by the present Corporation which is available on the record of the writ petition as Annexure 1 dated 13.11.1987 passed by the respondent Bihar State Electronics Development Corporation Limited which reads as under:-

"The Board of Directors in its meeting held on 26.10.87 has accorded post facto approval for application of Service Rules/Financial Rules of the State Govt, which are being followed in the corporation also.

2. This is being agreed as long as the corporation does not frame it own rules.

3. This is also subject to certain limitation prescribed by the State Government/ Board of Directors of the Bihar State Electronics Development/ Board of Directors

of the Bihar State Electronics Development Corporation Ltd."

and argues that the wordings of the resolution of the respondent Corporation and the one considered in the case of Lala Nand Kumar (supra) are identical in nature and as the judgments subsequently rendered and relied upon by the learned Advocate General in L.P.A. Nos.1558 of 2011 and 533 of 2014 do not refer to this judgment, the objection is unsustainable. Even though we find that in L.P.A. No.1558 of 2011 the judgment in the case of Lala Nand Kumar (supra) has not been referred to in L.P.A. No.533 of 2014, the judgment has been taken note of but for certain reasons indicated therein, it has not been applied.

Keeping in view the aforesaid facts and the order passed on 17.3.2017 in L.P.A. No.533 of 2017, we are of the considered view that the matter should be referred to a Full Bench for re-consideration as there are conflicting judgments on the issue in question as indicated hereinabove. That apart, learned Advocate General invites our attention to another judgment in the case of State of Bihar & Ors. Chandra Bhushan Choudhary, 2016(1) P.L.J.R. 764 where the judgment in the case of Lala Nand Kumar (supra) has been considered and distinguished.

Taking note of all these, we refer the matters to the Full Bench. Records be placed before the Chief Justice for constitution of the Full Bench and resolution of the issue."

However, during pendency of LPA No. 1294 of 2012 filed against the common order dated 19.2.2011 passed in CWJC No. 15213 of 2011 and 14388 of 2011, the writ petitioner-appellant Shivani Choudhary died and in her place, her nephew Deo Shankar Choudhary was substituted vide order dated 02.05.2019 but in all the orders, Shivani Choudhary has been mentioned. Let name of Shivani Choudhary be read as Deo Shankar Choudhary, as the appellant.

L.P.A. No. 1612 of 2012 has been filed against the order dated 13.7.2012 passed in Civil Review No. 48 of 2011 preferred against the order dated 21.6.2010 passed in CWJC No. 8429 of 2010 whereby the writ application as well as the review application were dismissed in terms of the order dated 23.11.2011 passed in Civil Review No. 46 of 2011 wherein the prayer of the writ petitioner for enhancement of age of retirement was rejected in the light of the State Government's communication dated 10.2.2010 informing the Corporation that it is not agreeable to the proposal of the Board of Directors of the Corporation to enhance the age of superannuation from 58 years to 60 years.

Hence, it will be open for the Division Bench to decide whether this LPA against review order without challenging the order of the writ court, is maintainable ?

The factual matrix of the case is that C.W.J.C. No. 15213 of 2011 along with other analogous cases, were filed before this Court, inter alia, for the following reliefs:

"In CWJC No.15213 of 2011

"That the instant writ application is filed for kind indulgence of this Hon'ble Court for following reliefs:-

(a) For issuance of an appropriate Writ/Writs, direction/directions in the nature of Mandamus or Writs, order or Orders for directing the Respondent State to enhance the age of Superannuation of the Employees of the Bihar State Electronics Department Corporation Limited from age 58 years to age 60 years in similar terms as it has been enhanced to the Government Employees of the state by bringing Amendment in Rule-73 of Bihar Service Code framed under proviso to Article-309 of Constitution of India including all types of Incidental Financial Benefits being made available to the Government Employees and other Corporations of the State.

(b) For further direction upon the Respondent concerned to allow the petitioner to continue in service till completion of the age of 60 years by the petitioners in terms of the Amendment in Rule-73 of Bihar Service Code framed under proviso to Article-309 of Constitution of Indian.

(c) For any other relief/reliefs which the Hon'ble Court may grant in the interest of the petitioners which may deemed appropriate and necessary in this during pendency of the instant application."

In CWJC No.14388 of 2011

"That the instant writ application is filed for kind indulgence of this Hon'ble Court for following reliefs:-

(a) For issuance of an appropriate Writ/Writs, direction/directions in the nature of Mandamus or Writs, order or Orders for directing the Respondent State to enhance the age of Superannuation of the Employees of the Bihar State Electronics Department Corporation Limited from age 58 years to age 60 years in similar terms as it has been enhanced to the Government Employees of the state by bringing Amendment in Rule-73 of Bihar Service Code framed under proviso to Article-309 of Constitution of India including all types of Incidental Financial Benefits being made available to the Government Employees and other Corporations of the State.

(b) For further direction upon the Respondent concerned to allow the petitioner to continue in service till completion of the age of 60 years by the petitioners in terms of the Amendment in Rule-73 of Bihar Service Code framed under proviso to Article-309 of Constitution of Indian.

(c) For any other relief/reliefs which the Hon'ble Court may grant in the interest of the petitioners which may deemed appropriate and necessary in this during pendency of the instant application."

In CWJC 8429 of 2010

"A. For quashing the Letter No.- 37 dated - 10-02-2010, issued by the Deputy Secretary, Information and Technology Department, Govt. Of Bihar, whereby the

Managing Director, Bihar State Electronics Development Corporation Limited (BSEDC), has been informed that the Government is not agreeable to the proposal of the Board of Directors of the Corporation to enhance the age of superannuation of its employees from 58 to 60 years.

B. For directing the respondents to enhance the date of superannuation from the age of 58 yrs to 60 years as per the State Govt's employees or other Govt's employees or other Board/Corporation's employees.

C. For grant of any other incidental, consequential or other relief/reliefs, to which the Petitioner is found entitled in the eye of law."

The writ petitioners could not succeed before the learned Single Judge and being aggrieved and dissatisfied with the impugned judgments, three intra-Court appeals have been filed as LPA No. 1294 of 2012 arising out of CWJC No. 14388 of 2011, LPA No. 78 of 2012 arising out of CWJC No. 15213 of 2011 and LPA No. 1612 of 2012 arising out of CWJC No. 8429 of 2010.

All the aforesaid three intra-Court appeals, as preferred under Clause X of the Letters Patent Appeal of the Patna High Court were placed before a Division Bench of this Court and being analogous matters, they were listed and heard together. It is evident from the order dated 31.10.2017, that the Division Bench of this Court, was apprised of two earlier judgments passed in LPA Nos. 1558 of 2011, decided on 18.11.2011 and LPA No. 533 of 2014 decided on 17.3.2017, by the learned Advocate General to contend that the appeal had no merits and deserved no consideration in as much as, the ratio of the aforesaid judgments affirmed that the enhanced age of superannuation as incorporated by amendment in the Bihar Service Code would not, ipso facto, apply to the employees of the Bihar State Electronics Development Corporation Limited (hereinafter referred to as the Corporation).

Per contra, learned counsel for the appellants invited attention of the Division Bench to an earlier judgment rendered by another Division Bench in the case of Lalanand Kumar and Ors. Vs. Bihar State Food and Civil Supplies Corporation Limited, reported in 2008(1) PLJR 579 with special reference to paragraph 8 thereof, to contend that in the case of Bihar State Food Corporation, vide resolution dated 21.5.1973 a decision was taken to enhance the age of superannuation.

Being confronted by the aforesaid two Division Bench judgments, this Court vide order dated 31.10.2017 considered it appropriate that the controversy/ inconsistency between the aforesaid Division Bench judgments be put at rest and, therefore, for an authoritative pronouncement, the matter has been referred to a Full Bench of this Court.

Before proceeding to frame the issue for consideration by this Full Bench, we deem it appropriate to reproduce certain relevant facts which are bedrock foundation of the writ petition in support of the claim. For the sake of convenience, we would take the facts from C.W.J.C. No. 14388 of 2011 giving rise to LPA No.1294 of 2012 and we would refer the parties as per the cause title in the writ petition itself.

The writ petitioner was an employee of the Corporation and was working in the said Corporation as Assistant at the relevant point of time. The Corporation is a body corporate which is registered under the Companies Act, 1956, under control of the State Government and therefore it is an instrumentality of the State within the meaning of Article 12 of the Constitution of India and thus amenable to the writ jurisdiction of this Court.

The dispute giving rise to the institution of the writ applications arose when the state government decided the age of superannuation of the government employees from 58 to 60 years by a circular dated 24.03.2005 and then carried out necessary amendments in this regard vide Notification No.1500 dated 29.03.2006 in Rule 73 of the Code.

In 41st meeting of the Board of Directors of the Corporation held on 27.10.1987, which has wrongly been referred as 26.10.1987 at several places, resolved that as long as the Corporation did not frame its own rules, government rules in this respect would be followed, as had been the practice and precedence. It was also resolved that the service condition/rules and financial rules of KELTRON/ MELTRON and UPTRON be obtained and examined for adoption and put up before the Board within six months. The extract of the 41st meeting of the Board of Directors of the Corporation reads as follows :-

"EXTRACT FOR THE 41ST MEETING OF THE BOARD OF DIRECTORS OF BIHAR STATE ELECTRONICS DEVELOPMENT CORPORATION LIMITED, HELD ON 27TH OF OCTOBER 1987 AT 11.00 A.M. IN THE REGISTERED OFFICE OF THE CORPORATION .

Agenda Note No. :- 41/12

Framing of Service Rules/Financial Rules of the Corporation

The Board resolved that as long as the Corporation does not frame its own rules, Govt. Rules in this respect be followed, as is the practice.

It was also resolved, that the service condition/Rules and Financial Rules of KELTRON/MELTRON and UPTRON be obtained and examined for adoption and put up before the Board within six months.

Certified to be true"

The confusion arose subsequently when the then MD of the Corporation issued an order dated 13.11.1987, who not only referred the date of 41st meeting as 26.10.1987, but also rechanged the purport of the resolution to the effect that the Board of Directors in its 41st meeting held on 26.10.1987 had accorded post facto approval for application of service rule/financial rule of state government which were being followed in the Corporation also, so long as the Corporation did not frame its own rules and inserted 3rd clause to the effect that this is also subject to certain limitations prescribed by the State Government/Board of Directors of the Corporation, which reads as follows :-

"BIHAR STATE ELECTRONICS DEVELOPMENT CORPORATION, LIMITED UDYOG BHAWAN, SECOND FLOOR, EAST GANDHI MAIDAN, PATNA-800004.

ORDER

The Board of Directors in its 41th meeting held on 26.10 has accorded post facto approval for application of Service Rule Financial Rules of the State Govt., which are being followed, in the Corporation also.

2. This is being agreed as long as the corporation does not frame its own rules.

3. This is also subject to certain limitation prescribed by State Government/Board of Directors of the Bihar State Electronic Development Corporation Ltd.

Sd/-

(S. N. Dubey)

Managing Director

Memo No. 3828/87 /87 dated 13/11/87

CC: All officers of Headquarters, Patna. All Project Incharge of the BSEDC. Officer Incharge of the Subsidiaries.

All Employees for information and necessary action

Managing Director"

It is surprising that the letter of the Managing Director of the Corporation dated 13.11.1987 was not produced before the writ Court as well as LPA court and original minutes of 41st meeting of the Board of Directors meeting dated 27.10.1987 have been brought for the first time before this larger bench.

However, learned Advocate General, when confronted with the letter of Managing Director modifying the actual resolution of the Board of Directors, contended that letter of the MD of the Corporation dated 13.11.1987 was approved in the 42nd meeting of the Board of Directors. Because of his stand, the matter was adjourned vide order dated 16.05.2019 which reads as follows :-

"As prayed for by the learned Advocate General to file an affidavit to explain the discrepancies with regard to date of 41st meeting of the Board of Directors which is mentioned in the minutes of the meeting as 27.10.1987 whereas in the consequential order issued under the signature of the Managing Director dated 13.11.1987 the date of 41st meeting of Board of Directors has been mentioned as 26.10.1987. Learned Advocate General further assured to bring on record the minutes of 42nd meeting of the Board of Directors to explain whether the order of the Managing Director, dated 13.11.1987, has been approved by the Board.

As prayed for by learned Advocate General, list these Appeals on 17th of June, 2019.

It is expected that the copy of the affidavit be served upon the learned counsel for the appellants before the next date of hearing."

No document was, however, brought on record to suggest that the letter of the Managing Director was ever approved in the 42nd meeting of the Board of Directors or in any other meeting of the Board. Consequently, the Corporation issued notification extending the age of retirement of the employees from 58 to 60 years.

One has to keep in mind the trite practice of Corporate Management wherein the minutes of the previous decision or resolutions are placed for ratification in the next Board meeting to ascertain as to whether the proceedings in the previous meeting was correctly recorded or not. It is never the practice that the Resolution of the Board is read in light of the letter of the Managing Director of the Corporation which was admittedly never ratified. It was only the 41st meeting's proceedings which was ratified in the 42nd meeting of the Board.

The Government did not agree with the said decision on two grounds vis, that a decision was taken by the Government that the Corporation and other Corporations were running in financial loss, hence there was a decision to wind up the non-performing corporations including the Corporation, vide resolution No. 562 dated 28.07.2003 and consequently a Company Petition was filed being Company Petition No.7 of 2004 and other analogous, cases which was dismissed as not maintainable. On dismissal of the company petition, the Government vide its letter No.177 dated 21.11.2008 took a decision that those corporations which are in profit for last five years, consecutively, and have wiped off all cumulative losses shall only qualify for the enhancement of age of the retirement. Though the Corporation came into profit in the financial years 2007-08, 2008-09, 2009-10, but the claim of the appellants and similarly situated person was rejected and in that background the writ application was dismissed and challenged in L.P.As., which have been referred to the larger bench.

Learned counsel for the appellants submits that the Board in its 41st meeting dated 27.10.1987 clearly resolved that till the Corporation did not frame its own rules, the government rules with regard to service rules and financial rules would be followed.

There is no dispute about this fact that the rule has not been framed by the Corporation till date. Hence, the case of the appellants, that principles of legislation by reference would apply and consequently, the amendment in Rule 73 of the Code will, ipso facto, apply to the employees of the Corporation and they are thus entitled to their service to continue till attaining the age of 60 years. Reliance has been placed on the case of Harwindra Kumar vs Chief Engineer Karmik and Ors., (AIR 2006 SC 365) and the case of Nagpur Improvement Trust Vs. Vasantrao and Ors. reported in (2002) 7 SCC 657, in support of their contention.

It is further contended that the case of Chandra Bhushan Chaudhary (supra) is not applicable to the case of the employees of the Corporation since that was a case with regard to Bihar State Khadi and Village Industries Board which only made adoptions with regard to disciplinary control over the subordinate staff and those regarding fixation and payment of salary T. A., C.L.A. and other allowances and not the wholesome adoption of government service rules, as has been done in the case of the Corporation.

So far as the case of Namindra Singh Vs. the State of Bihar and Anr. (L.P.A. No. 1558 of 2011) is concerned, order in the said case has been passed relying upon the notification of the MD of the Corporation dated 13.11.1987 which is contrary to the resolution of 41st meeting of the Board of Directors since the resolution of 41st meeting was deliberately not brought to the notice of the Division Bench. Similar is the case of Budha Dev Biswas (supra). The resolution of the Board of adopting the service rules of the state government by the Board was not brought to the notice of the Divison Bench and in that background the Division Bench distinguished the case of Budha Dev Biswas (supra) from that of the ratio laid down in the case of Lala Nand Kumar (supra). The correct view was taken in the case of Lala Nand Kumar, as is urged by learned counsel for the appellants.

Learned Advocate General appearing for the respondents submits that the resolution of the Board of Directors in its meeting dated 27.10.1987 was subject to the government's approval as gets reflected from the letter of the MD dated 13.11.1987. The Corporation was running in loss, hence a decision was taken for winding up all the corporations, including the corporation and ultimately the company petition was dismissed as not maintainable and the same has not been challenged till date, though the government had taken decision that in the corporations which are running in loss since last five years, the date of superannuation of their employees would not be extended from 58 to 60 and once the corporation would start running in profit for five consecutive years, their retirement age would be enhanced. Learned Advocate General further submits that the resolution of the Board of Directors dated 27.10.1987 is a 'resolution by incorporation', hence the subsequent amendment in Rule 73 of the Code will not, ipso fact, apply unless it is being adopted. Hence, in no case it can be treated as a case of 'legislation by reference'. Most of the employees have already retired at the age of 58 years and in respect of other corporations, similar view has been taken. Learned Advocate General relied upon the judgement of Budha Dev Biswas (supra) where the claim of similarly situated employees of the Board for enhancing the age of retirement was rejected. It has clearly been held that the decision of the State Government to enhance the age of superannuation of the state government's employees will have to be adopted by the Board of Directors subject to the approval by the State because the financial assistance flows from the State Government, he contends.

The learned Advocate General has further relied upon the case of Namindra

Singh (supra) to support his contention that the order of the Managing Director of the Corporation dated 13.11.1987 has been considered by the Division Bench and the claim of the appellant has been rejected on the ground that nothing in the order of the MD indicated that the Corporation had adopted the provisions contained in the Code as modified or altered from time to time. Unless the resolution passed by the Board of Directors expressly or by necessary implication provides reference of the provisions contained in the Code as amended from time to time to apply to the employees of the Corporation the decision of the Corporation cannot be governed by the principles of 'legislation by reference'. Further reliance has been placed by him on the case of Chandra Bhushan Chaudhary (supra) where similar claim of enhancement of retirement age of 58 to 60 with regard to Bihar State Khadi and Village Industries Board has been rejected.

It is submitted by Mr. Girijesh Kumar, learned counsel appearing for the Corporation that he joins the argument of learned Advocate General. He submits that as on date no rule prescribing service condition for the employees of the Corporation has been framed, but the Government never permitted to apply the amended Rule 73 of the Bihar Service Code. Moreover, out of three appellants two have already retired and one is dead. They have not worked for the said period and as per the government regulation, the benefits of enhancement in the age of superannuation was not admissible for the Corporations which were not in profit since last five years.

In the aforesaid backdrop of rival pleadings and contentions, the issue to be answered by the Full Bench are as under:

I. Whether the 41st Meeting of the Board of Directors dated 27.10.1987 adopting the service rules/financial rules of the State Government till the rules are made by the Corporation amounts to a legislation by incorporation or legislation by reference ?

II. Whether in view of the admitted position that the rules in the Corporation have not been framed till date, hence the resolution dated 27.10.1987 can or cannot be treated as legislation by incorporation ?

III. Whether in the case of legislation by reference, any amendment in the parent Act/legislation would, ipso facto, apply to those organizations in which the parent Act has been adopted through reference ?

IV. Whether in view of the absence of formulation of any Service Code in the Corporation of its own followed by the adoption through reference of Bihar Service Code till the time a proper service condition is not formulated for the employees of the Corporation, the amendment in the Bihar Service Code would have made available, ipso facto, to the employees of the Corporation or not ? and consequently;

V. Whether the employees of the Corporation in the aforesaid backdrop are entitled to the benefit of enhancement of age of retirement from 58 years to that of 60 years carried out by the State Government by amending Rule 73 of the Code and issuance of Resolution bearing No. 1500 dated 24.03.2005 ?

VI. Whether for treating the legislation by incorporation, the existence of two Acts and Rules is a pre-condition whereas in the present case there is only Bihar Service Code and there is no other rule ?

Before answering the reference points, it would be appropriate to refer legislative powers, modes of legislation etc. viz. legislation by legislature, ordinance making, rule making powers under the primary legislation; legislation by reference, legislation by incorporation etc.

For the present, we are concerned with the difference between the scope of two legislations, viz. legislation by incorporation and legislation by reference.

It is well settled that where the subsequent Act incorporates a provision of the previous Act, the position is that the borrowed provision is bodily lifted from the previous Act and placed in the subsequent Act and becomes an integral and independent part of it, so as to remain unaffected by any repeal, change or amendment in the previous Act. It is a rule of construction that where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second. Where the provision of an Act are incorporated by reference in a latter Act, the repeal of the earlier Act, in general, has no affect upon the construction or effect of the Act in which the provision has been incorporated.

The doctrine of incorporation by reference to earlier legislation came up for consideration by Lord Esher, M.R. in, In re Wood's Estate, Ex Parte Her Majesty's Commissioners of Works and Buildings, wherein it was observed as follows:

"If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all."

Craies on Statute Law, has referred to the aforesaid doctrine in the following terms -

"There is a rule of construction that where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second, as the incorporated provisions have become part of the second statute."

The Privy Council in Secretary of State for India in Council v. Hindusthan Co-operative Insurance Society Ltd, AIR 1931 PC 149 has observed a follows:

"Their Lordships regard the local Act as doing nothing more than incorporating certain provisions from n existing Act, and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt. The independent existence of the two Acts is therefore recognized; despite the death of the parent Act, its offspring survives in the incorporating Act. Though no such saving clause appears in the General Clauses Act, their Lordships think that the principle involved is as applicable in India as it is in this country."

The above noted decisions and enunciations of law have been considered by the Hon'ble Apex Court in the case of State of M.P. Vs. M.V. Narsimhan, reported in (1975) 2 SCC 377, wherein the issue of the effect of amendment and the definition of the public servant under IPC on the incorporation of the P.C. Act was being considered. In paragraph 8 of the decision, the Hon'ble Supreme Court held as follows:

"8. This the position is that after the provision of the previous Act is incorporated in the subsequent Act, the offspring, namely the incorporated provision, survives even if the previous Act is repealed, amended, declared a nullity or erased from eh statute book. The High Court appears to have relief on all these decisions in order to come to its conclusion that as the Act has incorporated the provisions of Section 21 of the Penal Code in Section 2 thereof, any amendment in the previous Act, namely the Penal Code, will not affect the subsequent Act, namely the Prevention of Corruption Act."

Hence, the position is that after the provisions of the previous Act is incorporated in subsequent Act, the offspring, namely, the incorporated provision survives even if the previous Act is repealed, amended, declared a nullity or erased from the statute book.

The Apex Court has summarized the propositions which emerged from the discussion in paragraph 15 of the judgment, which is being reproduced hereinbelow:

"15. On a consideration of these authorities, therefore, it seems that the following proposition emerges:

Where a subsequent Act incorporates provisions of a previous Act then the borrowed provision become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases:

(a) where the subsequent Act and the previous Act are supplemental to each other;

(b) where the two Acts are in pari materia;

(c) where the amendment made in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and

(d) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act."

We have the benefit of yet another decision by the Hon'ble Supreme Court in the case of Nagpur Improvement Trust vs. Basant Rao and Ors., reported in (2002) 7 SCC 657 wherein the concept of the legislation by reference and legislation by incorporation has been considered and deliberated upon. Paragraphs 30 to 37 of the judgment read as follows:

"30. These appeals (Civil Appeal Nos. 6590 to 6592 of 2002) deserve to be allowed and the impugned judgments and orders of the High Court set aside, and the respondents directed to compute and pay the interest payable to the appellants in accordance with law as enunciated in Sunder vs. Union of India.

31. We shall now proceed to consider whether the provisions of the Land Acquisition Act, 1894 as modified by the State Acts stand incorporated in the State Acts or whether there is a mere reference or citation of the land Acquisition Act in the State Acts. The law on the subject is well settled. When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been bodily transposed into it. The incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. But this must be distinguished from a referential legislation which merely contains a reference or the citation of the provisions of an earlier statute. In a case where a statute is incorporated, by reference, into a second statute, the repeal of the first statute by a third does not affect the second. The later Act along with the incorporated provisions of the earlier Act constitute an independent legislation which is not modified or repealed by a modification or repeal of the earlier Act. However, where in later Act there is a mere reference to an earlier Act, the modification, repeal or amendment of the statute that is referred, will also have an effect on the statute in which it is referred. It is equally well settled that the question whether a former statute is merely referred to or cited in a later statute, or whether it is wholly or partially incorporated therein, is a question of construction.

32. In Secretary of State vs. Hindustan Cooperative Insurance Society Ltd., the Privy Council observed :

"In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second: see the cases collected in "Craies on Statute law," Edn.3, pp. 349-50. This doctrine finds expression in a common-form section which regularly appears in the Amending and Repealing Acts which are passed from time to time in India. The section runs:

'The repeal by this Act of any enactment shall not affect any Act.... in which such enactment has been applied, incorporated or referred to.'

The independent existence of the two Acts is therefore recognized; despite the death of the parent Act, its offspring survives in the incorporating Act. Though no such saving clause appears in the General Clauses Act, their Lordships think that the principle involved is as applicable in India as it is in this country.

It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition."

33. In Wood's Estate, Ex p, Works and Buildings Commrs., Re Ch D 607 at p 615 Lord Esher, M.R. observed :

"If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act as if they had been actually written in it with the pen, or printed in it."

34. In U.P. Avas Evam Vikas Parishad vs. Jainul Islam and another (supra) this Court observed :(SCC p. 480, para 17

"17. A subsequent legislation often makes a reference to the earlier legislation so as to make the provisions of the earlier legislation applicable to matters covered by the later legislation. Such a legislation may either be (i) a referential legislation which merely contains a reference to or the citation of the provisions of the earlier statute; or (ii) a legislation by incorporation whereunder the provisions of the earlier legislation to which reference is made are incorporated into the later legislation by reference. If it is a referential legislation the provisions of the earlier legislation to which reference is made in the subsequent legislation would be applicable as it stands on the date of application of such earlier legislation to matters referred to in the subsequent legislation. In other words, any amendment made in the earlier legislation after the date of enactment of the subsequent legislation would also be applicable. But if it is a legislation by incorporation the rule of construction is that repeal of the earlier statute which is incorporated does not affect operation of the subsequent statute in which it has been incorporated. So also any amendment in the statute which has been so incorporated that is made after the date of incorporation of such statute does not affect the subsequent statute in which it is incorporated and the provisions of the statute which have been incorporated would remain the same as they were at the time of incorporation and the subsequent amendments are not to be read in the subsequent legislation."

35. This is a reiteration of the principle as laid down by earlier judgments of this Court in a catena of decisions including Mary Roy vs. State of Kerala ; Ramsarup vs. Munshi ; Ram Kripal Bhagat vs. State of Bihar ; Bolani Ores Ltd. vs. State of Orissa ; Mahindra and Mahindra Ltd. vs. Union of India.

36. It is also well settled that the question as to whether a particular legislation falls in the category of referential legislation or legislation by incorporation

depends upon the language used in the statute in which reference is made to the earlier decision and other relevant circumstances.

37. In Bhatinda Improvement Trust vs. Balwant Singh and others (supra) a question arose regarding the applicability of the first proviso of Section 6(1) of the Land Acquisition Act, 1894 as substituted by Act 68 of 1984 to an improvement scheme under the Punjab Act providing for acquisition of the land under the Land Acquisition Act. In that case the first notice published under Section 36(2) of the Punjab Act in May, 1977 was followed by a Notification under Section 42 published in June, 1980 sanctioning the scheme. Since the notice under Section 42 was issued after the expiry of the period of three years from the date of the publication of the Notification under Section 36(2) of the Punjab Act, it was contended that the acquisition proceeding lapsed. Upholding the contention the Court held that the first proviso to Section 6(1) of the Land Acquisition Act was applicable since there was no question of incorporation of any of the provisions of the Land Acquisition Act into the Punjab Act. This Court observed that the Punjab Act did not deal with acquisition of land for the purposes of a scheme as contemplated thereunder. The acquisition of such land for the purposes of the scheme is left to the general law of the land, namely the Land Acquisition Act which has to be resorted to for the acquisition of land for the purposes of the schemes contemplated under the Punjab Act. The only difference is that some of the provisions of the Land Acquisition Act, as referred to in the relevant sections of the Punjab Act, are given effect to as amended by the relevant sections of the Punjab Act. In these circumstances, it cannot be held that any provisions of the Land Acquisition Act have been incorporated into the Punjab Act and, therefore, the provisions of the Land Acquisition Act, as they stood at the time of acquisition, would be applicable in the absence of any contrary intention. The judgment was rendered by a bench of two Judges of this Court. The same question again arose in Gauri Shankar Gaur and others vs. State of U.P. and others (supra) in the context of the provisions of the U.P. Act. A two Judge Bench of this Court upheld the validity of the acquisition but the learned judges recorded different reasons for coming to the same conclusion. After referring to a large number of decisions of this Court Ramaswami, J. recorded his conclusion in the following words:

"33. Section 55 of the Act read with the schedule made an express incorporation of the provisions of Section 4 (1) and Section 6 as modified and incorporated in the schedule. The schedule effected necessary structural amendments to Sections 4, 6, 17 and 23 incorporating therein the procedure and principles with necessary modifications. Sections 28(2) and 32(1) prescribe procedure for publication of the notifications under Sections 28(1) and 32(1) of the Act without prescribing any limitation. It is a complete code in itself. The Act is not wholly unworkable or ineffectual though may be incompatible with provisos to Section 6(1) of the Land Acquisition Act. The U.P. Legislature did not visualize that later amendment to Central Act 1 of 1894 i.e. Land Acquisition Act would be automatically extended. We have, therefore, no hesitation to conclude that

Section 55 and the schedule adapted only by incorporation Sections 4(1) and 6(1) and the subsequent amendments to Section 6 did not become part of the Act and they have no effect on the operation of the provisions of the Act."

The issue of extending benefit of enhancement in the age of superannuation from 58 to 60 years to the employees of U.P. Jal Nigam in the light of amendment made in Rule 56(a) of the Uttar Pradesh Fundamental Rules enhancing the age of superannuation from 58 to 60 years in view of the decision to govern the service conditions of the employees of the Nigam by that of Rules, Regulations and orders governing condition of service of the government servants came up for consideration before the Hon'ble Supreme Court in the case of Harwindra Kumar Vs. Chief Engineer, Karmik and Ors., (AIR 2006 SC 365). Paragraph Nos. 8 to 12 read as follows:

"8. From the aforesaid provisions, it would be clear that the appointed date for the purposes of the Act was 18th June, 1975 when the Nigam was established and under Section 37 of the Act, conditions of service of the appellants/ petitioners who were employed in the Local Self Engineering Department of the Government of Uttar Pradesh before the appointed date, were continued to remain the same as they were before the appointed date unless and until the same are altered by the Nigam under the provisions of the Act. Section 97 confers power upon the Nigam with the previous approval of the State Government to frame Regulations in relation to service conditions of employees of the Nigam and acting thereunder, Regulations were framed by the Nigam in the year 1978, Regulation 31 whereof provides that service conditions of the employees of the Nigam shall be governed by such rules, regulations and orders which are applicable to other serving government servants functioning in the State of Uttar Pradesh. Thus, from a bare reading of Section 37 and Regulation 31, it would be clear that the service conditions of the employees of the Nigam would be the same as are applicable to the employees of the State Government under the Rules, Regulations and Orders applicable to such government servants so long the same are not altered by the Nigam in accordance with the provisions of the Act. If Regulations would not have been framed, the Nigam had residuary power under Section 15(1) of the Act whereby under general power it could change the service conditions and the same could remain operative so long regulations were not framed but in the present case, regulations were already framed in the year 1978 specifically providing in Regulation 31 that the conditions of service of the employees of the Nigam shall be governed by the Rules, Regulations and Orders governing the conditions of service of government servants which would not only mean then in existence but any amendment made therein as neither in Section 37 nor in Regulation 31, it has been mentioned that the Rules then in existence shall only apply. After the amendment made in Rule 56(a) of the Rules by the State Government and thereby enhancing the age of superannuation of government servants from 58 years to 60 years, the same would equally apply to the employees of the Nigam and in case the State Government as well as the Nigam intended that the same would not be applicable, the only option with it was to make suitable amendment in Regulation 31 of the Regulations after taking previous approval of the State Government and by simply issuing direction by the State Government purporting to act under Section 89 of the Act and thereupon taking administrative decision by the Nigam under Section 15 of the Act in relation to age of the employees would not tantamount to amending Regulation 31 of the Regulations.

9. Reference in this connection may be made to a decision of this Court in the case of V.T.Khanzode and others v. Reserve Bank of India and another AIR 1982 SC 917. In that case, under Section 58(1) of the Reserve Bank of India Act, powers were conferred upon the Central Board of Directors of the Bank to make regulations in order to provide for all matters for which provision was necessary or convenient for the purpose of giving effect to the provisions of the Act which section in the opinion of their Lordships included the power to frame regulation in relation to service conditions of the bank staff. In that case, instead of framing regulations, the bank issued administrative circulars in relation to service conditions of the staff acting under Section 7(2) of the Reserve Bank of India Act which was a general power conferred upon the bank like Section 15(1) of the present Act. It was laid down that "there is no doubt that a statutory corporation can do only such acts as are authorized by the statute creating it and that, the powers of such a corporation cannot extend beyond what the statute provides expressly or by necessary implication." It was further laid down that "so long as staff regulations are not framed under Section 58(1), it is open to the Central Board to issue administrative circulars regulating the service conditions of the staff, in the exercise of power conferred by Section 7(2) of the Act." As in the said case, no regulation was at all framed under Section 58 of the Reserve Bank of India Act, as such, the administrative circulars issued by the Central Board of Directors of the Bank under Section 7(2) of the Reserve Bank of India Act in relation to service conditions were held to be in consonance with law and not invalid.

10. In the present case, as Regulations have been framed by the Nigam specifically enumerating in Regulation 31 thereof that the Rules governing the service conditions of government servants shall equally apply to the employees of the Nigam, it was not possible for the Nigam to take an administrative decision acting under Section 15(1) of the Act pursuant to direction of the State Government in the matter of policy issued under Section 89 of the Act and directing that the enhanced age of superannuation of 60 years applicable to the government servants shall not apply to the employees of the Nigam. In our view, the only option for the Nigam was to make suitable amendment in Regulation 31 with the previous approval of the State Government providing thereunder age of superannuation of its employees to be 58 years, in case, it intended that 60 years which was the enhanced age of superannuation of the State Government employees should not be made applicable to employees of the Nigam. It was also not possible for the State Government to give a direction purporting to Act under Section 89 of the Act to the effect that the enhanced age of 60 years would not

be applicable to the employees of the Nigam treating the same to be a matter of policy nor it was permissible for the Nigam on the basis of such a direction of the State Government in policy matter of the Nigam to take an administrative decision acting under Section 15(1) of the Act as the same would be inconsistent with Regulation 31 which was framed by the Nigam in the exercise of powers conferred upon it under Section 97(2) (c) of the Act.

11. For the foregoing reasons, we are of the view that so long Regulation 31 of the Regulations is not amended, 60 years which is the age of superannuation of government servants employed under the State of Uttar Pradesh shall be applicable to the employees of the Nigam. However, it would be open to the Nigam with the previous approval of the State Government to make suitable amendment in Regulation 31 and alter service conditions of employees of the Nigam, including their age of superannuation. It is needless to say that if it is so done, the same shall be prospective.

12. For the foregoing reasons, the appeals as well as writ petitions are allowed, orders passed by the High Court dismissing the writ petitions as well as those by the Nigam directing that the appellants of the Civil Appeals and petitioners of the Writ Petitions would superannuate upon completion of the age of 58 years are set aside and it is directed that in case the employees have been allowed to continue up to the age of 60 years by virtue of some interim order, no recovery shall be made from them but in case, however, they have not been allowed to continue after completing the age of 58 years by virtue of erroneous decision taken by the Nigam for no fault of theirs, they would be entitled to payment of salary for the remaining period up to the age of 60 years which must be paid to them within a period of three months from the date of receipt of copy of this order by the Nigam. There shall be no order as to costs."

So far as the reliance placed by the learned Advocate General in the case of Budha Dev Biswas (supra) is concerned, in the said judgment, the resolution of the Board of Directors in 41st meeting has not been considered. Hence, for answering the issue involved, this judgment is of no help.

In the case of Namindra Singh (supra), the Division Bench decided the issue on the basis of letter of the then MD of the Board dated 13.11.1987 which is contrary to the resolution of the 41st meeting of the Board of Directors. The relevant portion reads as follows :-

"The appellant claims that the Corporation has adopted the Service Rules prevalent in the State Government. Therefore, the enhanced age of superannuation shall apply to the employees of the Corporation also. Reliance is placed on the order dated 13th November 1987 made by the Managing Director of the Corporation. The said order reads as under:

"1. The Board of Directors in its 41th meeting held on 26.10.87 has accorded post facto approval for application of Service Rules Financial Rules of the State Govt., which are being followed, in the corporation also. 2. This is being agreed as long as the corporation does not frame its own rules. 3. This is also subject to certain limitation prescribed by State Government/Board of Directors of the Bihar State Electronic Development Corporation Ltd."

Learned single Judge has rejected the claim. Therefore, the Present Appeal.

Learned Advocate Mr. Yogesh Chandra Verma has appeared for the appellant. He has submitted that in view of the Resolution passed by the Board of Directors of the Corporation, the service conditions prevalent in the State Government for the civil servants of the State shall apply to the employees of the Corporation. He has submitted that the learned single Judge has erred in relying upon the oral submission made on behalf of the corporation that the Corporation has taken specific decision not to enhance the age of superannuation of the employees of the Corporation.

We see no merit in this Appeal. The above referred order only indicates that whatever service Rules and financial Rules of the State Government were applied to the employees of the Corporation, such application was approved by the Board of Directors of the Corporation. Nothing in the said order indicates that the Corporation has/had adopted the provisions contained in the Bihar Service Code as modified or altered from time to time, unless the Resolution passed by the Board of Directors expressly or by necessary application provides that the Provisions contained in the Bihar Service Code as amended from time to time shall apply to the employees of the Corporation, the contention can not be countenanced.

On the materials before us, it is not possible for us to hold that the Bihar Service Code as modified or altered from time to time is made applicable to the employees of the Corporation. Moreover, now the appellant has, on reaching the age of superannuation, retired from service."

From bare perusal of the operative portion of the judgement quoted above, it is evident that the resolution of 41st meeting of the Board of Directors was not brought to the notice of the Court nor this aspect was under consideration whether such legislation will amount to incorporation of the provision of the Code into the Rule of the Corporation or it would be only the legislation by reference. So far as the case of Chandra Bhushan Chaudhary (supra) is concerned, it relates to the employees of Bihar State Khadi and Village Industries Board who claimed the enhancement of retirement age from 58 to 60 as per amendment in the Code. Their claim was negated by the Division Bench on the ground that the Board had only adopted the rules and regulations relating to disciplinary control over the subordinate staff and those regarding fixation and payment of salary T.A., C.L.A. and other allowances. Since there is nothing on record to suggest that any other decision was taken by the Board to apply the service conditions to its employees as applicable to the employees of the state government. Paragraphs 22 and 23 of the judgement read as follows :-

"22. From the proceedings of 21st Ordinary Meeting of the Board, held on

18.06.1958, extracted above, what clearly surfaces is that the Board had approved the proposal to follow relevant Rules and Regulations of the State Government in respect of the matters, "relating to disciplinary control over subordinate staff and those Patna High Court LPA No.1074 of 2014 dt.03/11/2015 13/17 regarding fixation and payment of salary, T.A., C.L.A. and other allowances", pending finalization of the Rules and Regulations of the Board.

23. There is absolutely no material on record to show that any other decision was taken by the Board to apply the service conditions, as applicable to the employees of the State Government, to the employees of the Board."

The above quoted paragraphs from the judgement in the case Chandra Bhusan Choudhary (supra) clarifies that the resolution of the 21st meeting dated 18.06.1958 of the Khadi and Village Industries Board was not an adoption of the service rule, rather was confined to the matters relating to disciplinary control over the subordinate staffs. Hence the judgement is distinguishable on facts and will not apply in the present case where the service law relating to service conditions of the Bihar Govt. Servant applies.

The Division Bench, in the case of Lala Nand Kumar (supra) has laid down correct view in paragraph 8 of the judgement, which reads as follows :-

"8. In the appeals and the writ petitions, the appellants and the writ petitioners are contending that they are entitled to the benefit of extension of the age of superannuation with effect from the date, since when the officers and employees of the State Government obtained the same. The respondent-Corporation is contending that it is a benefit which has been accorded by the Corporation to its employees and accordingly its decision to give such benefit from the date from which the same has been given cannot be altered at the instance of the persons to whom such benefit has not been accorded. In law, a benefit accorded by an employer to a class of its employees cannot be asked by another class of employees to whom such benefit has not been given. Accordingly, if the Corporation decides to accord benefit of extension of the age of superannuation from 29th July, 2006, the officers and employees of the Corporation, who have reached the age of superannuation as was in vogue until 28th July, 2006, cannot ask the Corporation to grant the benefit of extension or ask for giving effect to the decision of enhancement with retrospective effect. Therefore, the one and the only thing that this Court is required to look at is whether the benefit of extension has been given to the appellants, writ petitioners and other similarly situated employees of the Corporation even without the notification dated 29th July, 2006. For that matter the one and the only thing that is to be looked at is the resolution of the Corporation dated 21st May, 1973."

The resolution taken by the Bihar State Food and Civil Supplies Corporation in Lala Nand Kumar (supra) in its meeting dated 21st May 1973, reads as follows :-

"11. In those circumstances, the appeals are allowed. The orders under the appeals are set aside. The writ petitions filed by the appellants and also other writ petitions considered analogously are allowed and the Corporation is directed to pay the salaries payable to the petitioners treating them to have served until the age of 60 years. It is declared that in view of the resolution of the Corporation dated 21st May, 1973 they were entitled to serve up to the age of 60 years no sooner Rule 73 of the Bihar Service Code stood altered in the manner as indicated above. In the event, any of these writ petitioners has not yet attained the age of 60 years, they should forthwith be permitted to rejoin their services."

Similar is the resolution, rather of a wider connotation, which was taken in 41st meeting of the Board. Hence, the ratio as laid down in the above quoted paragraph applies with full force in the present case.

Through supplementary affidavit dated 8.04.2013, the orders of learned single Judge passed in CWJC No. 1324 of 2011 (Yogeshwar Prasad Singh Vs. the Bihar State Financial Corporation. and Ors.), CWJC No. 6297 of 2011 (Krishna Ram Vs. The State of Bihar and Ors.), CWJC No. 11625 of 2011 (Surajdeo Prasad Vs. Bihar State Financial Corporation and Anr.) and CWJC No. 11746 of 2011 (Bishwanath Rai Vs. The Bihar State Financial Corporation and Anr.) have been brought on record where the employees of the Bihar State Financial Corporation claimed the enhancement of the retirement age of its employee on the basis of 41st resolution of the Board dated 27.10.1987. The Corporation Employees' Federation filed a writ petition in representative capacity before the Jharkhand High Court being W.P. (S) No. 5777 of 2006 seeking a direction to implement the decision of the Corporation. The said writ application was dismissed by the learned single Judge vide order dated 12.02.2007. Aggrieved thereby L.P.A. No. 83 of 2007 was preferred by the writ petitioners and during the pendency of the said appeal, the State Government had refused to enhance the age of superannuation of the employees. Vide order dated 27.01.2009, the Division Bench of the Jharkhand High Court clarified that any superannuation in the meantime shall be subject to the result of the appeal. Ultimately, on conclusion of hearing, the LPA was allowed vide order dated 22.04.2009, the operative portion of the order dated 22.04.2009 reads as follows:-

"Admittedly, not only the employees of different Corporations and local bodies of the State of Bihar, but also the Corporations and other local bodies of the State of Jharkhand have increased the age of superannuation of their employees from 58 years to 60 years. Although, the stand of the State Government is that because of financial position of the Corporation, sanction for increase of age of superannuation has not been given, but no materials have been brought on record to show that the financial position of the Corporation is not good. On the contrary, taking into consideration the financial position of the Corporation, the Board of Directors, which is the competent authority has taken a resolution for enhancement of the age of superannuation of the employees from 58 years to 60 years. In the aforesaid premises, in our considered opinion, the decision of the Government of Bihar of not according sanction for the enhancement of age of superannuation of the employees of the corporation is not justified and cannot be sustained in law. The learned Single Judge has not considered this aspect of the matter. We, therefore, allow this appeal and set aside the impugned judgment passed by the learned Single Judge and direct the respondents-State of Bihar to accord sanction for the enhancement of age of the employees of the Corporation within a period of 30 days from the date of receipt of a copy of this orders."

However, the writ petitioner thereafter filed a review application being Civil Review No.56 of 2009 seeking certain clarifications in the order passed in the said Appeal. The said civil review was disposed of vide order dated 20.05.2009. The Court clarified the appellate order in the following manner, which reads as follows :-

"Hence, in the light of the order dated 22nd April, 2009, we observe that the sanction for enhancement of age of the employees of the corporation from 58 years to 60 years shall be made applicable to the employees, who attained the age of superannuation."

By the aforesaid order, even the retired employees were made entitled to get extended the age of superannuation. The respondent corporation challenged the order in SLP which was dismissed by the Hon'ble Supreme Court, in limine, vide order dated 01.10.2009.

During pendency of the appeal, the employees were forced to retire, when MJC No. 754 of 2009 was filed before the Jharkhand High Court and vide order dated 16.12.2009, the Division Bench allowed the Corporation to file a show cause and directed not to retire any employee of the Corporation till the age of 60 years. During pendency of the said contempt proceeding the Corporation came out with a notification dated 17.02.2010 whereby decision/resolution to enhance the age of retirement of its employee from 58 to 60 was made operative with effect from 16.12.2009, the date, the Court passed the interim order.

In the said MJC No.754 of 2009, when the respondent corporation, amending its earlier resolution issued another resolution dated 30.03.2010 whereby the decision to enhance the age of superannuation was shifted back from 12.02.2007, the date on which the writ petition was dismissed. The aforesaid resolution/decision of the Corporation to implement the decision to enhance the age of superannuation of its employees with effect from 12.02.2007 was subsequently approved by the government with effect from 25.08.2006, the date on which the Board of Directors of the Corporation resolved to amend the regulation No. 19 (1) to enhance the age of its employee from 58 to 60. Accordingly, the Corporation came out with an order dated 19.04.2010 whereby the earlier standing order was modified whereby, enhancement of age of superannuation of its employees was made effective from 25.08.2006. Following the said ratio, the learned single Judge vide order dated 29.08.2011 passed in CWJC No. 1324 of 2011 and its analogous cases allowed the writ application with certain directions directing to pay salary to the petitioners for the period they were kept out of job before attaining 60 years of age. The relevant part of the order reads as follows :-

"The Respondent-Corporation and its officials are directed to pay the salary to the petitioners for the period(s) they were kept out of job before attaining 60 years of age. The Respondent-Corporation shall calculate the amount of salary payable to each of the petitioner and authorize payment thereof in their favour within a period of eight weeks from the date of receipt/production of a copy of this order."

The aforesaid order was challenged in L.P.A. Nos.1656 of 2011, 1864 of 2011 and 1813 of 2011.

There is nothing on record that dismissal of the L.P.A. has been challenged by the Corporation by the Supreme Court.

Though the issue whether the resolution of 41st meeting of the Corporation is a legislation by reference or incorporation, was neither raised nor answered before the proceeding in Jharkhand High Court nor before the Patna High Court in the aforementioned proceedings, but these facts have been incorporated in the writ application for twin purpose, i.e., to establish that the Corporation is taking inconsistent stand in various proceedings and secondly, to allow the Division Bench to decide the L.P.As separately, on their respective merits.

In view of the above discussions, we hold that resolution of 41st meeting of the Corporation dated 27.10.1987 is a legislation by reference, since, no rule of the Corporation has come into existence till date hence there is no question of treating it a legislation by incorporation which needs transplantation of certain provision from the previous enactment to the subsequent enactment and if there is no rule, then there is nothing to regulate the service condition of the employees of the Corporation. Ex consequenti, all such employees who stood compulsorily superannuated before attaining the age of 60 years, are entitled for consequential benefits provided they are able to show that they were not gainfully employed elsewhere.

The reference is answered accordingly.

These Letters Patent Appeals are being remitted to be placed before the Division Bench after obtaining the permission of Hon'ble the Chief Justice.

