

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 709 of 2023

With

L.P.A. No. 18 of 2024

1. The Bihar State Financial Corporation, having its office at Frazer Road, P.O.- GPO, P.S.- Gandhi Maidan, District- Patna (Bihar)

2. The Board of Directors, Bihar State Financial Corporation, having its office at Frazer Road, P.O.- GPO, P.S.- Gandhi Maidan, District- Patna (Bihar)

Both representing through Dilip Kumar, son of Ram Briksh Prasad, presently posted as Managing Director, Bihar State Financial Corporation, Patna, resident of 409 C Block, Jyotipuram Apartment, Baily Road, Jagdeo Path More, Patna (Bihar) Appellants (in both cases)

Versus

1. Rajnikant son of Late F. Prasad, resident of Elyssian City, Nandusthan, P.O. & P.S.- Chas, District- Bokaro

2. Ajay Kumar Thakur, son of Late Laxmi Narayan Thakur, resident of Q. No. 156/2/1, Mohalla Bagbera, P.O. & P.S.- Bagbera, Town Jamshedpur, District- East Singhbhum

3. Arun Kumar, son of Late Jagannath Prasad, resident of Gautam Kutir, Housing Board Colony, Depugarha, P.O.- Depugarha, P.S.- Sadar, District- Hazaribagh

4. Soma Munda, son of Late Vikram Munda, resident of Village- Kisanpur, P.O.- Booty, P.S.- Sadar, District- Ranchi

5(a). Mriyam Kisku, wife of Late Suresh Kumar Marandi, resident of Near Pani Tanki, Village- Pugru Kumba Toli, P.O.- Hatia, P.S.-Dhurwa, Ranchi

6. Rajeev Lochan, son of Late Sadhu Prasad, resident of Matwari, Kumhar Toli, P.O.- Hazaribagh, P.S.- Sadar, District- Hazaribagh

7. Sita Devi, wife of Late Uday Ram, resident of Village Babugaon, P.O. & P.S.- Korrah, District- Hazaribagh

8. The State of Bihar through the Secretary, Industries Department, Government of Bihar, Patna

9. The State of Jharkhand, Ranchi

.... .. Respondents (in both cases)

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SHANKAR**

For the Appellants : Mr. Indrajeet Sinha, Advocate
Mr. Deepak Kumar Dubey, Advocate
Ms. Rashi Sharma, Advocate
Ms. Ruhi Dubey, Advocate
For the Respondent Nos. 1 to 7 : Mr. Krishna Murari, Advocate
Mr. Raj Vardhan, Advocate
Mr. Ritesh Kumar Pathak, Advocate
For the Respondent no. 8 : Mr. S.P. Roy, Advocate
For the Respondent no. 9 : Mr. Yogesh Modi, A.C. to A.A.G.-IA
Ms. Ruchi Mukhi, A.C. to A.A.G.-IA

Reserved on 17.03.2026
Per : Rajesh Shankar, J. :

Pronounced on 02.04.2026

L.P.A No. 709 of 2023

1. The present Letters Patent Appeal is directed against the judgment dated 23.02.2023 (modified vide order dated 06.04.2023) passed by the learned Single Judge in W.P.(S) No. 2402 of 2021 filed by the petitioners/private respondents, whereby the said writ petition has been allowed observing that the decision of the Bihar State Financial Corporation (BSFC) (hereinafter referred to as "the Corporation") to extend the benefit of 6th pay revision to its employees is well within its jurisdiction and the same cannot be said to be illegal or without jurisdiction nor it can be said to be dependent upon the State. Further, the Corporation has been given liberty to implement its own resolution to extend the benefits of the recommendation of 6th Pay Revision Commission (PRC) to its employees at the earliest.

Brief facts of the case

2. The Finance Department, Government of Bihar, issued a resolution as contained in memo No. 630 dated 21.01.2010 with respect to implementation of 6th PRC for the employees of State Government w.e.f.

01.01.2006. It was decided in the first meeting of the Board of Directors of the Corporation held on 28.06.2019 that the pay scale of the employees of the Corporation would be revised as per 6th Pay Revision notionally w.e.f. 01.01.2006 and actually payable w.e.f. 01.04.2007. It was further decided by the Board of Directors that the payment of the benefits and arrears of 6th PRC would be made from its own resources after obtaining approval from the Department of Industries (Administration), Government of Bihar.

- 3.** Thereafter, the Managing Director of the Corporation vide letter dated 15.07.2019, requested the Secretary, Department of Industries, Government of Bihar to accord administrative approval for implementing the decision taken by the Board of Directors, however the same remained unresponded.
- 4.** The petitioners/private respondents thereafter preferred a writ petition being W.P (S) No. 861 of 2020 seeking issuance of direction upon the State of Bihar and the present appellants (the respondents therein) to give effect to the decision taken by the Board of Directors of the Corporation in its meeting held on 28.06.2019. The said writ petition was disposed of by the learned Single Judge vide order dated 03.07.2020 directing the State of Bihar to take a decision in accordance with the rules, regulations and guidelines as well as taking into consideration the decision of the Board of Directors of the Corporation.
- 5.** The order dated 03.07.2020 passed in W.P (S) No. 861 of 2020 having not been complied, the writ petitioners preferred Contempt (Civil) Case No. 618 of 2020.
- 6.** During the pendency of the contempt proceeding, Additional Chief

Secretary, Department of Industries, Government of Bihar, in purported compliance of the order dated 03.07.2020, issued an order as contained in memo No. 663 dated 11.02.2021 whereby the State of Bihar refused to give concurrence on the recommendation as sought by the Board of Directors of BSFC stating that as per the latest audit report of BSFC, the Corporation had an operational loss of Rs.13.45 crores based on the estimates of the audited balance sheet/profit and loss account for the Financial Year 2018-19 and accordingly, in the light of the advice of the Finance Department, the Department of Industries (Administration) Government of Bihar, declined to grant the benefits of 6th PRC to the employees of the Corporation.

- 7.** Thereafter, the said contempt case was disposed of vide order dated 09.04.2021. The writ petitioners then preferred another writ petition being W.P (S) No. 2402 of 2021 which was allowed vide order dated 23.02.2023 (modified vide order dated 06.04.2023) giving liberty to the Corporation to implement its own resolution in relation to extending the benefits of the recommendations of the 6th PRC to its employees at the earliest.
- 8.** Thereafter, the Board of Directors held a meeting on 15.05.2023 and resolved that the presumption of profit was based on the total receipts and total payments during a particular financial year. Moreover, difference in gross receipts and gross payment cannot be considered as profit. It further reviewed the financial condition and balance sheet of the year 2020-21 of the Corporation and found that the Corporation had suffered a loss of Rs.506.27 Crores. A loan of Rs.228.47 crores was taken from the State of Bihar on which Rs.249.46 crores interest had

accrued which was not paid by the BSFC to the State of Bihar. Hence, it was resolved to withdraw the decision taken in its first meeting dated 28.06.2019 regarding implementation of the 6th PRC w.e.f. 01.04.2007.

Argument on behalf of the Appellants

- 9.** The learned counsel for the appellants submits that the decision to implement the 6th PRC was taken under wrong presumption of operational profit which was erroneously calculated on the basis of total receipts and total expenses of a particular financial year i.e. 2019-20.
- 10.** It is further submitted that after passing of the order dated 23.02.2023 in W.P.(S) No. 2402 of 2021, the Corporation made a detailed review and found that it was running in cumulative loss of Rs.506.27 crores in the financial year 2020-21 and as such the proposal for implementation of 6th PRC to the employees of Corporation was withdrawn.
- 11.** It is also submitted that the learned Single Judge has failed to appreciate that due to inadvertence, the operational profit was erroneously calculated on the basis of total receipts and total expenses of a particular year, without taking into account the loan and interest liability of the Corporation and as such, the same needs to be corrected.
- 12.** Learned counsel for the appellants further argues that the total loss as per the Balance Sheet of the year 2020-21 was Rs. 506.27 Crores and in such circumstance, the implementation of the 6th PRC notionally w.e.f. 01.01.2006 and financially w.e.f. 01.04.2007 was not viable in view of the precarious financial condition of the corporation and would be ruinous for the corporation.
- 13.** It is also contended that Section 39 of the State Finance Corporation Act, 1951 (in short, the Act, 1951") gives primacy to the State

Government in deciding the question of dispute with respect to the policy and the Corporation is bound by the instruction of the State Government.

14. Further, Section 48 of the Act, 1951 clearly provides that the Board may, after consultation with the Small Industries Bank and with the previous sanction of the State Government, make regulations not inconsistent with the said Act and the rules made thereunder to provide for all matters to which provision is necessary or expedient for the purpose of giving effect to the provisions of the said Act.
15. It is also contended that that if Board takes any decision without prior approval of the State Government, it would be in gross violation of Sections 39 and 48 of the Act, 1951.

Argument on behalf of the writ petitioners/private respondents

16. The learned counsel for the writ petitioners/private respondents submits that the reply communication dated 12.08.2020 made by the Corporation to the Department of Industries, Government of Bihar, clearly records that in the Financial Year 2019-20, the BSFC was in operational profit of about 1070.50 Lakhs (11 crores 20 lakhs), besides having cash surplus of Rs.28.70 crores.
17. It is further submitted that the balance sheet as of 31.03.2019 clearly recorded that the Board had got cash and bank balance of Rupees One Hundred Eight Crores, Sixty Five Lakhs, Fifty Nine Thousand, Six Hundred and Thirty One (Rs.1,08,65,59,631/).
18. It is also submitted that the claim of the writ petitioners/private respondents is squarely covered by the judgment dated 31.08.2016 passed in L.P.A. No. 821 of 2015 by the Patna High Court wherein

similar dispute with respect to extending the benefits of 5th pay revision had arisen wherein it was held that according to the resolution of the Board of Directors of the Corporation taken vide resolution dated 14.09.1970, all the pay scales including the cost of living allowances and House Rent allowance of its employees would be *mutatis mutandis* as per the State Government's order issued from time to time regarding revision of the said benefits extended to the State Government employees till 28.09.2008.

- 19.** Learned counsel for the writ petitioners further argues that since the benefits of 6th pay revision has been extended to the employees of the State Government notionally w.e.f. 01.01.2006 and financially w.e.f. 01.04.2007, the resolution dated 28.06.2019 passed by the Board of Directors of the Corporation deserves to be enforced.
- 20.** It is also contended that even otherwise, the Corporation has filed the present appeal on the basis of fresh resolution/minutes of meeting dated 15.05.2023 wherein it was resolved that it had incurred loss of approx. Rs.506.27 crores as per balance sheet of Financial Year 2020-21 as well it had taken loan of Rs.228.43 crores from Government of Bihar and therefore, the decision taken in the Board of Directors' meeting dated 28.06.2019 and the letter dated 15.07.2019 whereby the said decision was sent to the Department of Industries, Government of Bihar for approval, was taken back. The said action of the Corporation is an abuse of process of law and completely contrary to the averments made in the counter affidavit filed by the Corporation specifically stating on oath that adequate fund is available with the Corporation. Therefore, the fact regarding borrowing of loan and payable dues to the

Government of Bihar is something new and concocted fact which is *non-est* in the eye of law.

21. It is further urged that the resolution dated 28.06.2019 being one of the dominant factors for passing the impugned judgment dated 23.02.2023, cannot be abruptly overturn during continuity of the judicial process which is also suggestive of callous attitude of the authorities of the Corporation and the State of Bihar.
22. It is also submitted that the present matter is squarely covered by the judgment of the learned Division Bench of the Bombay High Court rendered in the case of **Bhartiya Kamgar Karmachari Mahasangh Vs. The Maharashtra State Financial Corporation** reported in **2013 SCC Online Bom 1663**, where the plea of the Maharashtra State Financial Corporation to negate the benefits of 6th Pay Revision to its employees for want of sufficient fund, was rejected.

Finding of the Court

23. Heard learned counsel for the parties and perused the materials available on record.
24. Thrust of the contention of the appellants is that due to inadvertence, the Board of Directors of the Corporation, in its first meeting held on 28.06.2019, decided to extend the benefits of 6th Pay Revision to the employees of the Corporation, however the same was subsequently withdrawn in its meeting held on 15.05.2023 on the ground that the decision to implement the 6th PRC to the employees of the Corporation was taken under the wrong presumption that the Corporation was in profit, however the said presumption was based on the total receipts and total payments made during a particular financial year, i.e.

2019-20. It was further mentioned that the difference in gross receipts and gross payments during a particular financial year cannot be considered as profit. Actually, as per the Balance Sheet of the financial year 2020-21, the Corporation was in loss of approx. Rs.506.27 crores.

25. On the contrary, the contention of the private respondents is that once a conscious decision was taken in the Board of Directors' meeting held on 28.06.2019 that the benefits of 6th pay revision would be given to the employees of the Corporation and that being one of the prime factors in passing the impugned judgment dated 23.02.2023 in W.P.(S) No. 2402 of 2021, the appellants cannot turn around from their earlier stand by taking a baseless plea of the Corporation suffering a loss of Rs.506.27 crores in subsequent financial year. It is further argued that Section 23 of the Act, 1951 gives autonomy to the Corporation to fix the service conditions including the remuneration of its employees and the State of Bihar has no role to play in the said matter. In fact, the Corporation's action in referring the decision of the Board's meeting dated 28.06.2019 to the Department of Industries, Government of Bihar for its approval, was itself contrary to law.

26. Thus, the following issues fall for consideration of this Court: -

- (i) Whether the Government of Bihar had any jurisdiction with respect to implementation of 6th PRC for the employees of the Corporation?
- (ii) Whether the subsequent stand of the Corporation in refusing to implement the 6th PRC for its employees is lawful and justified?

Re:- Issue No. (i)

27. The Act, 1951 was promulgated with an object to establish State Financial Corporations with a view to finance medium and small-scale industries in the States.
28. Section 23 of the Act, 1951 provides that the Financial Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions, and determine, by regulations, their conditions of appointment and service as well as the remuneration payable to them.
29. A proviso was inserted in the said Section by the Amendment Act 77 of 1972 which provided that the State Government may, in consultation with and after obtaining advice of the Development Bank, specify the classes or categories of posts in respect of which appointment may be made by the Board on such remuneration and other conditions of service as the Board may determine, and no regulation made under the Act, 1951 shall apply to such posts in respect of matter so determined by the Board.
30. Thus, by the said proviso, the State Government was empowered to give the direction to the Board in the matter of appointment and remuneration of its employees. However, the said proviso to Section 23 of the Act, 1951 was subsequently omitted by the Amendment Act 39 of 2000 with effect from 05.09.2000.
31. In the case of **Bhartiya Kamgar Karmchari Mahasangh Vs. Maharashtra State Financial Corporation, Mumbai and Another** reported in **2013 SCC OnLine Bom 1663**, a Division Bench of Bombay High Court comprising of one of us (Mr. M.S. Sonak, C.J.), had

an occasion to interpret Section 23 of the Act, 1951 as it stood after deletion of the proviso by the Act 39 of 2000. In the said case, the Bench held that financial corporation is an autonomous body which has the power to determine the conditions of appointment and services as well as the remuneration payable to its employees and in view of the deletion of the proviso to Section 23, it is no longer necessary to obtain prior approval of the State Government.

- 32.** Para 7 of the said judgment is quoted hereinbelow for ready reference in the present case, which reads as under: -

"7. After having heard both the learned counsel appearing on behalf of the petitioner and the respondents, in our view, there is much substance in the submissions made by the learned counsel appearing on behalf of the petitioner. Before we take into consideration the rival submissions, it is necessary to consider the said section 23 which reads as under:

"23. Officers and other employees of the Financial Corporation.— The Financial Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions, and determine, by regulations, their conditions of appointment and service and the remuneration payable to them:

Provided that the State Government may, in consultation with and after obtaining the advice of the [Subs. By Act 52 of 1975, section 34, for the words "Reserve Bank" (w.e.f. 16th February, 1976).] [Development Bank], specify the class or categories of posts in respect of which appointments may be made by the Board on such remuneration and other conditions of service as the Board may determine, and no regulation made under this Act shall apply to such posts in respect of matters so determined by the Board."

The proviso to section 23 was inserted by the Amendment Act 77 of 1972 which provided that the State Government after obtaining advice of the Development Bank would decide the question of remuneration and other conditions of service which are determined by the Board. The said proviso,

however, was deleted and omitted by the Amendment Act 39 of 2000 with effect from 5-9-2000. In view of the deletion of the said clause, therefore, it is no longer necessary to obtain prior approval of the State Government. Since the petitioner is a Financial Corporation and it is an autonomous body, having power to determine the conditions of appointment and services as also the remuneration which is payable to its employees, it is not necessary for the Board of Directors to obtain prior approval of the State Government. The contention of the learned AGP appearing on behalf of the State is not accepted. The contention of the State Government that on account of losses suffered by respondent No. 1 Corporation, it will not be possible to extend the benefit of VIth Pay Commission is without any substance. It has to be noted here that so far as conditions of service and remuneration of the employees of respondent No. 1 are concerned, these are matters for respondent No. 1 Corporation to consider and, therefore, will not be dependent on the other factors and, as such, the reasons given by the State Government for not giving the approval cannot be accepted. Even otherwise, the learned counsel for the petitioner has rightly pointed out that the approval of the State Government is no longer necessary or required since the respondent No. 1 Corporation is an autonomous body. Under these circumstances, in our view, respondent No. 1 need not wait till the approval is given by the State Government and shall implement the said decision, which was taken by the Board of Directors in its meeting held on 29-11-2012, by giving the benefit of VIth Pay Commission to its employees. Writ petition is, accordingly, allowed and disposed of in the aforesaid terms.”

- 33.** We are in respectful agreement with the view taken in the aforesaid case by the Division Bench of the Bombay High Court. The Amendment Act 39 of 2000 was introduced with an object to provide the State Financial Corporation with greater autonomy and operational flexibility. In order to achieve the said objective, the legislature omitted the proviso to Section 23 and thus Section 23 of the Act, 1951 as it stands now, confers absolute power to the financial corporation to appoint its officers, advisers and employees and to determine their conditions of

appointment and service as well as the remuneration payable to them. The power of the State Government to give any direction to the State Financial Corporation with respect to the appointment of employees and their regulation has thus been taken away.

- 34.** Furthermore, regulation 8(2) of the Bihar State Financial Corporation (Staff) Regulation 1965 provides that the Board shall fix the pay scales of officers, clerical and sub-ordinate staff of the Corporation whereas regulation 49 of the said Regulation provides that the salary for each post or group of posts shall be determined by the Board of Directors which consists of (a) pay, (b) allowances and (c) leave pay.
- 35.** Learned counsel for the appellants has put much reliance on Section 39 of the Act, 1951 and has tried to impress this Court that any decision of the Board of Directors of the Corporation with regard to implementation of pay revision is subject to the approval of the State Government which is accorded taking into consideration the financial status of the Corporation.
- 36.** We have perused Section 39 of the Act, 1951, which empowers the State Government to give instructions to the Board on the question of policy in consultation with and after obtaining advice of the Small Industries Bank and the Board is guided by the said instructions in discharge of its function.
- 37.** Thus, Section 39 of the Act, 1951 empowers the State Government to issue instructions on the question of policy and the Board is bound to follow such instructions in discharge of its function. The appellants have however failed to show before this Court that any instruction on policy was issued by the State Government to the Board after taking advice of

Small Industries Bank. In fact, Section 23 is an independent provision which gives complete autonomy to the Corporation with respect to the conditions of service and remuneration to its employees. Moreover, the said section is not guided by section 39 of the Act, 1951.

- 38.** The learned counsel for the appellants has however fairly submitted that while denying approval to the recommendation of the appellant-Corporation for extending the benefits of 6th pay revision to the employees of the Corporation, the State has not exercised the power conferred under Section 39 of the Act, 1951.
- 39.** Thus, we are of the view that the Government of Bihar had no jurisdiction with regard to implementation of the 6th PRC for the employees of the Corporation, rather the Corporation itself was competent to take its decision on the said subject in exercise of the power conferred under Section 23 of the Act, 1951.
- 40.** The issue no. (i) is answered accordingly.

Re: - Issue No. (ii)

- 41.** In the present case, it is evident from the record that in the first meeting of the Board of Directors of the Corporation held on 28.06.2019, it was decided to extend the benefits of sixth pay revision to the employees of the Corporation notionally w.e.f. 01.01.2006 and financially w.e.f. 01.04.2007. The said decision of the Board of Directors was then sent to the Secretary, Department of Industries, Government of Bihar vide letter no. 413 dated 15.07.2019 for administrative approval. The Executive Director-cum-In-charge Joint Director (Technical), Department of Industries, Government of Bihar, vide letter dated 08.07.2020, asked the Managing Director of the Corporation to

explain as to what was the operational profit in the financial years 2018-19 and 2019-20. The said letter was replied by the Deputy Director (Personnel & Administrative) vide letter no. 297 dated 12.08.2020 stating that the operational profit for the financial year 2019-20 was about Rs.1070.50 Lakhs. He further requested to grant the benefits of sixth pay revision to the employees of the Corporation. In pursuance of the order dated 03.07.2020 passed in W.P.(S) No. 861 of 2020, the Additional Chief Secretary, Department of Industries, Government of Bihar issued the order as contained in memo no. 663 dated 11.02.2021 whereby it was decided not to implement 6th PRC in favour of the employees of the Corporation on the basis of operational loss of Rs.13.45 crores as per the audited balance-sheet/profit and loss account of the financial year 2018-19. Even after the said decision, the Board of Directors of the Corporation in its meeting held on 22.09.2021 decided to request the Department of Industries, Government of Bihar to review its earlier decision taken vide order as contained in memo no. 663 dated 11.02.2021 since the same was taken on the basis of the operational loss occurring in the financial year 2018-19, whereas the Corporation had earned operational profit of Rs.18.58 crores in the financial year 2019-20.

- 42.** The appellants of the present case had filed counter affidavit in the writ proceeding and had fully supported their earlier decision taken with regard to implementing 6th PRC for their employees. It would be appropriate to refer few of the relevant paragraphs of the counter affidavit dated 26.04.2021 filed by the Corporation in W.P.(S) No. 2402 of 2021 which read as under: -

"30. That the statements made in Para 32(a) to (c) of the writ petition is matter of records. In this regard statement of profit/loss from 2006-2007 to 2019-2020 is as under: -

<i>F.Y</i>	<i>Profit & Loss in Crs.</i>
<i>2006-2007</i>	<i>26.26</i>
<i>2007-2008</i>	<i>28.28</i>
<i>2008-2009</i>	<i>01.36</i>
<i>2009-2010</i>	<i>0.01</i>
<i>2010-2011</i>	<i>1.73</i>
<i>2011-2012</i>	<i>0.05</i>
<i>2012-2013</i>	<i>(-) 10.80</i>
<i>2013-2014</i>	<i>(-) 11.63</i>
<i>2014-2015</i>	<i>(-) 17.07</i>
<i>2015-2016</i>	<i>(-) 14.37</i>
<i>2016-2017</i>	<i>(-) 16.38</i>
<i>2017-2018</i>	<i>(-) 45.99</i>
<i>2018-2019</i>	<i>(-) 13.45</i>
<i>2019-2020</i>	<i>18.58</i>

In the FY 2019-2020, the Corporation is in operational profit of Rs. 18.58 Crs.

31. That in reply to the statements made in Para 33 of the writ petition, it is stated and submitted that adequate fund is available with corporation against borrowing of State Govt. of a sum of Rs. 228.47 Crs.

35. That the statements made in Para 38 of the writ petition is related to the bank deposit of BSFC and decision of Board of Directors in its meeting held on 28.06.2019 to give benefits of 6th pay revision to its employees through its own resources and sought permission of state Government and the same is matter of

records.

41. That it is further stated and submitted that the Board of Director of the Bihar State Financial Corporation in its meeting 22.09.2021 revealed that in year the Financial 2019-2020, the Corporation is in profit of Rs. 18.58 Crores operational (Rupees Eighteen Crore Fifty-Eight Lakh) as per audited balance sheet.

42. That in view of above, the Industry Department, Government of Bihar may be again requested for implementation of sixth pay to employee of the Corporation as per resolution of the Board of Directors of the Corporation passed in its meeting held on 28.06.2019."

- 43.** The learned Single Judge, after taking into consideration the stand taken in the counter affidavit filed by the Corporation as well as the record of the case, held that the action of State of Bihar in not according concurrence, was illegal as the instant case did not come within the purview of any policy decision in terms of Section 39 of the Act, 1951, rather it was covered under Section 23 of the said Act.
- 44.** Astonishingly, the Board of Directors of the appellant Corporation in its meeting held on 15.05.2023 i.e., subsequent to disposal of W.P.(S) No. 2402 of 2021, changed the earlier decision of implementing the 6th Pay Revision for its employees on the ground that the decision taken in the first meeting dated 28.06.2019 was under wrong presumption that the Corporation was in profit and the said presumption was based on the total receipts and payments during the financial year of 2019-20. It was further mentioned that the Corporation was running in cumulative loss of Rs.506.27 crores as per the balance-sheet of financial year 2020-21.
- 45.** We are of the firm view that such decision of the appellants is not at all

bonafide, rather, seems to have taken under undue pressure of the Department of Industries, Government of Bihar. Once after going through the entire aspects of the matter including the financial condition, the appellants had taken a conscious decision to implement 6th PRC for the employees of the Corporation, they cannot be permitted to deviate from their earlier stand by taking a plea that as per the balance sheet of the financial year 2020-21, the Corporation was in loss of Rs.506.27 crores. Since the decision to implement 6th PRC was taken in the financial year 2019-20, and that being the relevant financial year to assess the financial status of the Corporation during which it was in operational profit of Rs.18.58 crores also having the adequate fund against borrowing of the State Government of Rs.228.47 crores, the implementation of 6th PRC cannot be denied to the employees of the Corporation on the ground of financial constraint.

- 46.** The learned counsel for the appellants has put reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **A.K. Bindal and Another Vs. Union of India & Others** reported in **(2003) 5 SCC 163** wherein it has been held that economic viability or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to function resulting in close down which will inevitably have disastrous consequences for the employees themselves. It has further been held that mere non-revision of pay scale will not amount to violation of the fundamental right guaranteed under Article 21. Even under the industrial law, the view is that the workmen should get a minimum wage or a fair wage but not that their wages must be revised

and enhanced periodically.

- 47.** Learned counsel for the appellants has also put reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **State of H.P. Vs. Rajesh Chander Sood** reported in **(2016) 10 SCC 77** wherein it has been held that the state government has the authority to exercise its administrative powers to fix a cut-off date, to continue the right to receive pension with respect to some pensioners and depriving of some others. It has further been held that the government is vested with the inherent power to review its earlier administrative decisions and policy and is free to alter the same.
- 48.** In the case of **Punjab State Coop. Milk Producers Federation Ltd. Vs. Balbir Kumar Walia** reported in **(2021) 8 SCC 784**, the Hon'ble Supreme Court has held as under: -

"27. In a judgment reported as [Officers & Supervisors of I.D.P.L. v. I.D.P.L., (2003) 6 SCC 490], this Court held that the employees cannot legitimately claim that their pay scales should necessarily be revised and enhanced when the organisation in which they are working are making continuous losses and are deeply in the red. It was held as under: (SCC pp. 497-98, para 11)

"11. In our view, the economic capability of the employer also plays a crucial part in it, as also its capacity to expand business or earn more profits. The contention of Mr Sanghi, if accepted, that granting higher remuneration and emoluments and revision of pay to workers in other governmental undertakings and, therefore, the petitioners are also entitled to the grant of pay revision may, in our opinion, only lead to undesirable results. Enough material was placed on record before us by the respondents which clearly shows that the first respondent had been suffering heavy losses for the last many years. In such a situation the petitioners, in our opinion, cannot legitimately claim that their pay scales should

necessarily be revised and enhanced even though the organisation in which they are working are making continuous losses and are deeply in the red. As could be seen from the counter-affidavit, the first respondent company which is engaged in the manufacture of medicines became a sick industrial company for various reasons and was declared as such by the BIFR and the revival package which was formulated and later approved by the BIFR for implementation could not also be given effect to and that the modifications recommended by the Government of India to the BIFR in the existing revival package was ordered to be examined by an operating agency and, in fact, IDBI was appointed as an operating agency under Section 17(3) of SICA. It is also not in dispute that the production activities had to be stopped in the major two units of the company at Rishikesh and Hyderabad w.e.f. October 1996 and the losses and liabilities are increasing every month and that the payment of three instalments of interim relief could not also be made due to the threat of industrial unrest and the wage revision in respect of other employees is also due w.e.f. 1992 which has also not been sanctioned by the Government of India.”

30. In the third category of cases, in respect of Central or State Government, the factor of financial constraints has been found to be relevant when the liberalised benefits were granted from a particular date. In *Amar Nath Goyal [State of Punjab v. Amar Nath Goyal, (2005) 6 SCC 754]*, the question examined was whether limiting of benefits only to the employees who retired or died on or after 1-4-1995 after calculating the financial implications was irrational or arbitrary, the Court held as under : (SCC p. 763, para 26)

“26. It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/State Governments to limit the benefits only to employees, who retire or die on or after 1-4-1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and

germane for any policy decision touching the administration of the Government, at the Centre or at the State level.”

32. The Central or State Government is empowered to levy taxes to meet out the expenses of the State. It is always a conscious decision of the Government as to how much taxes have to be levied so as to not cause excessive burden on the citizens. But the Boards and Corporations have to depend on either their own resources or seek grant from the Central/State Government, as the case may be, for their expenditures. Therefore, the grant of benefits of higher pay scale to the Central/State Government employees stand on different footing than grant of pay scale by an instrumentality of the State.

- 49.** The aforesaid judgments relied upon by the learned counsel for the appellants is not applicable to the facts and circumstance of the present case particularly in view of the fact that it was the own stand of the appellants before the writ court that they had sufficient fund available to extend the benefits of 6th PRC to the employees of the Corporation.
- 50.** Thus, it is highly unjustified on the part of the appellants in drastically changing their stand and denying to extend the benefits of 6th PRC to their employees after passing the order by the writ court.
- 51.** Issue No. (ii) is decided accordingly.
- 52.** In view of the aforesaid discussion, we do not find any infirmity in the impugned order dated 23.02.2023 passed in W.P. (S) No. 2402 of 2021.
- 53.** The present Letters Patent Appeal is dismissed.
- 54.** Pending application(s), if any, also stands disposed of.

L.P.A No. 18 of 2024

- 55.** The present Letters Patent Appeal is directed against the order dated 08.12.2023 passed in Civil Review No. 50 of 2023 whereby the learned Single Judge has dismissed the said review petition filed by the appellants seeking review of the judgment dated 23.02.2023 passed in

W.P.(S) No. 2402 of 2021.

56. The learned counsel for the appellants submits that the learned Single Judge while dismissing the said review petition filed by the appellants has made an observation that the Corporation seeking to modify the order dated 23.02.2023 passed in W.P.(S) No. 2402 of 2021 by a subsequent decision taken in its Board of Directors' meeting held on 15.05.2023, manifestly amounts to contempt and the Chairman of the Corporation has been directed to file an affidavit as to why a contempt proceeding be not initiated against him.
57. It is further submitted that the present appeal has been filed as the said observation made by the learned Single Judge will cause serious prejudice to the interest of the appellants.
58. The learned counsel for the appellants puts reliance on the judgment of the Hon'ble Supreme Court rendered in the case of **Union of India & Others Vs. Bikash Kumar** reported in **(2006) 8 SCC 192** wherein it has been held that if a mistake is committed in passing an administrative order, the same can be rectified by complying the principles of natural justice. It has further been held that only in a case where the mistake is apparent on the face of record, a rectification thereof is permissible without providing any opportunity of hearing to the aggrieved party.
59. At the outset, the learned counsel for the respondents has objected to the maintainability of the present appeal.
60. We have perused the judgment rendered by the Hon'ble Supreme Court in the case of **Shanker Motiram Nale Vs. Shiolalsing Gannusing Rajput** reported in **(1994) 2 SCC 753**. The said case was filed

against an order of a Division Bench of the High Court rejecting the application seeking review of a judgment and decree passed by a learned Single Judge. Their Lordships dismissed the appeal by observing that the same was not filed against the basic judgment whereas Order XLVII Rule 7 of the Code of Civil Procedure (CPC) bars an appeal filed against the order of the court rejecting the review petition.

61. In the case of **Satheesh V.K. Vs. Federal Bank Ltd.** reported in **2025 SCC OnLine SC 2046**, the Hon'ble Supreme Court has held that the plain language of Order XLVII, Rule 7(1) of the CPC makes it clear that no appeal lies from an order rejecting a petition for review.

62. In the said case, it has been observed as under: -

"24. However, the principle underlying Order XLVII, Rule 7(1) of the Code of Civil Procedure may be understood. Whenever a party aggrieved by a decree or order seeks a review thereof based on parameters indicated in section 114 read with Order XLVII of the Code of Civil Procedure and the application ultimately fails, the decree or order under review does not suffer any change. It remains intact. In such an eventuality, there is no merger of the decree or order under review in the order of rejection of the review because such rejection does not bring about any alteration or modification of the decree or order; rather, it results in an affirmance of the decree or order. Since there is no question of any merger, the party aggrieved by the rejection of the review petition has to challenge the decree or order, as the case may be, and not the order of rejection of the review petition. On the contrary, if the petition for review is allowed and the suit or proceedings is placed for rehearing, rule 7(1) permits the party aggrieved to immediately object to the order allowing the review or in an appeal from the decree or order finally passed or made in the suit, i.e., after rehearing of the matter in dispute."

63. A Division Bench of this Court in the case of **M/s Bharat Coking Coal**

Limited & Others Vs. Socio Techno Environment Institute & Others (L.P.A No. 408 of 2001) while refusing to entertain an appeal filed against an order passed under review jurisdiction, held the same to be not maintainable by putting reliance on the judgment of the Hon'ble Supreme Court rendered in the case of **Konkan Railway Corporation and Another Vs. Rani Construction Private Limited** reported in **(2002) 2 SCC 388**.

- 64.** Thus, it is no more *res integra* that an appeal is not maintainable against an order refusing to review any judgment. The reason behind it is that an order dismissing review petition is not an adjudicatory order. Even after dismissal of the application seeking review, there is no merger of the original decree or order with the order passed under review jurisdiction as such rejection does not bring about any alteration or modification of the original decree or order. Under the said situation, the aggrieved party may challenge the original decree or order by filing an appeal.
- 65.** For the reasons as indicated above, the present appeal is liable to be dismissed being not maintainable and we order accordingly.
- 66.** Before parting with the case, we wish to add that so far as the observation made by the learned Single Judge in the order dated 08.12.2023 passed in Civil Review No. 50 of 2023 to the effect that the action of the appellants amounts to contempt, is concerned, it is evident that the said Civil Review is still kept pending by directing the Chairman of the Corporation to file an affidavit explaining as to why a contempt proceeding be not initiated against him and vide order dated 13.02.2024, the same has been ordered to be listed after disposal of the

present batch of appeals. Thus, the appellants will get due opportunity of hearing in the said case and only thereafter, it will be determined as to whether they have committed contempt of the court's order. Thus, the said observation made by the learned Singe Judge will not cause any prejudice to the interest of the appellants. We however do not wish to comment further on the said observation at this stage.

- 67.** Moreover, since L.P.A No. 709 of 2023 filed against the order dated 23.02.2023 (as modified vide order dated 06.04.2023) passed in W.P.(S) No. 2402 of 2021 has already been dismissed by this Court, there is no question of entertaining the present appeal which has been filed against the order refusing to review the same.
- 68.** The present appeal is, accordingly, dismissed.
- 69.** Pending application(s), if any, also stands disposed of.

(M.S. Sonak, C.J.)

(Rajesh Shankar, J.)

April 2nd, 2026
Ritesh/**A.F.R.**
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