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THE STATE OF BIHAR & ANR.

v.

DR. SACHINDRA NARAYAN & ORS.

(Civil Appeal No. 884 of 2019)

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JANUARY 30, 2019

**[DR. DHANANJAYA Y CHANDRACHUD
AND HEMANT GUPTA, JJ.]**

*Anugraha Narayan Sinha Institute of Social Studies Act,
1964:*

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ss. 6, 8, 9 and 10 – Payment of Pension – To the employees of the Institute incorporated under the Act – Responsibility to pay – Whether on State Government – As per resolution dated 15.02.1985, the Board of the institute implemented retiral benefits which were to be paid by the Institute from its own resources – Pension was paid

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to the employees after the resolution, but was stopped from January 2014 – Writ petition seeking direction for payment of pension and arrears thereof – Petition dismissed by High Court holding that State was not obliged to pay the pension in view of the resolution – In intra-court appeal Division Bench of High Court held that the

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State was obliged to pay the pension – On appeal, held: The resolution of the Board of the Institute to implement the retirement benefit scheme from its own resources will not bind the State Government to pay the amount of pension – The provision of payment of pension in the Budget of the State Government was a voluntary act, and not enforceable by a Writ of Mandamus – Release of grant

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is in the discretion of the grantor and cannot be forced by the grantee – Obligation to bear the amount of pension by the State Government is not mandated either by s. 8 or s. 9 of the Act – Payment of pension in the past, will not confer an enforceable right in favour of the Institute or the employees.

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Administrative Law:

Legitimate Expectation – Held: Legitimate expectation is one of the grounds of judicial review, but unless a legal obligation exists, there cannot be legitimate expectation – It is not a wish or a desire or a hope and hence cannot be claimed as a right.

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Allowing the appeal, the Court

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HELD: 1. The resolution of the Board of the Institute to implement a retirement benefit scheme from its own resources will not bind the State Government to pay the amount of pension to the employees of the Institute. The employees of such Institute cannot be treated at par with the employees of the State Government nor the State can be burdened with the responsibility to pay pension to the employees of the Institute. [Para 23][762-E-F]

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2. Section 6 of the Anugraha Narayan Sinha Institute of Social Studies Act, 1964 empowers the Board to create posts and to hold, control and administer its property and the funds, but the post carrying an emolument of rupees one thousand per month or more cannot be created without the previous approval of the State Government. Though the proviso to Section 6(2) of the Act requires approval of the State Government in respect of creation of post carrying pay of more than Rs.1000/-, but the intention is that any financial expenditure of recurring nature would require the approval of the State Government. Therefore, if the amount of pension exceeds rupees one thousand per month, the same could not be claimed from the State Government as a right without approval. The State Government cannot be called upon to bear the burden of the pension as such scheme was not approved or even sought for. The provision of payment of pension in the Budget of the State Government is a voluntary act not enforceable by a writ of mandamus. The release of grant is in discretion of the grantor and cannot be forced by the grantee. [Para 15][758-A-D]

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3. It is true that in certain financial years as per documents on record, the amount of pension was specifically mentioned while granting grant to the Institute, but such amount is in discretion of the State and cannot be enforced by a writ of mandamus. There is no obligation on the State to disburse the grant towards the pension amount in terms of the Act or the Rules or even in terms of the resolution of the Board. [Para 16][758-E-F]

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4. Sub-Section (1) of Section 8 of the Act mandates the State Government to contribute a sum of rupees two lacs in each financial year for the maintenance of the Institute, whereas, sub-

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- A Section (2) empowers the State Government to contribute from time to time, such additional sums as it may deem fit for special items of research or education work, publication, buildings and for proper maintenance and development of the Institute. Such payment for the special projects, is in discretion of the State
- B Government in view of the object for which the grant is to be disbursed, but sub-Section (2) does not include disbursement of the amount of pension as the contribution is for limited purpose which is not recurring in nature. [Para 17][758-F-H]

5. The money contributed to the Institute by the State Government is one source of the fund of the Institute. Section

- C 9(3) of the Act provides that the funds shall be applied towards meeting the expenses of the Institute including expenses incurred in exercise of its powers and discharge of its functions under the Act. Therefore, the retirement pension scheme, at best can be treated to be a part of obligation of utilization of funds of
- D the Institute but such obligation to bear the amount of pension fund is not on State Government as it is not mandated either by Section 8 or Section 9 of the Act. [Para 18][759-A-B]

6. It is not correct to say that the State Government has provided funds for payment of pension for the last many years,

- E therefore, the Institute and the employees of the Institute have legitimate expectation to receive the amount of pension. A pious hope even leading to moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural
- F sequence. [Paras 19, 20][759-C-D]

Union of India & Ors. v. Hindustan Development Corporation & Ors. (1993) 3 SCC 499 : [1993] 3 SCR 128; Ram Pravesh Singh and Others v. State of Bihar and Others (2006) 8 SCC 381 : [2006] 6 Suppl. SCR 512 – relied on.

Case Law Reference

[1993] 3 SCR 128	relied on	Para 20
[2006] 6 Suppl. SCR 512	relied on	Para 21

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 884 of A
2019.

From the Judgment and Order dated 13.03.2018 of the High Court of Judicature at Patna in LPA No. 1018 of 2017.

Ms. Meenakshi Arora, V.N. Sinha, Sr. Advs., Ms. Abha R. Sharma, D.S. Pramar, Ms. Sujeeta Srivastava, Saurabh Shandilya, A. Lakshminarayanan, Kripa Shankar Prasad, Ms. J. Priyadarshini, Advs. for the appearing parties.

The Judgment of the Court was delivered by

HEMANT GUPTA, J. 1. The present appeal is directed against an order passed by the Division Bench of the High Court of Judicature at Patna on 13.03.2018 whereby the Writ Petition was allowed directing the appellant to provide financial assistance for payment of the arrears as well as current pension to the employees of the Anugraha Narayan Sinha Institute of Social Studies, Patna (Institute).

2. The Institute is incorporated by the Anugraha Narayan Sinha Institute of Social Studies Act, 1964, (Act). The Institute has a perpetual succession and a common seal. The Chairman of the Board of Control is a nominee of the State Government. The State Government is also to nominate two persons of eminence in consultation with the Chairman; whereas, the others are ex-officio members such as Vice-Chancellor of Patna University, another Vice-Chancellor to be nominated by the State Government other than that of Patna University in rotation in alphabetical order as per names of Universities; two representatives of the Indian Council of Social Science Research, New Delhi; one representative of the University Grants Commission; one faculty member not below the rank of a Professor and a Secretary to the State Government in the Department of Education and in the Department of Finance.

3. In terms of Section 6 of the Act, the Board is the supreme governing body of the Institute and is to exercise all the powers of the Institute. Section 8 mandates the State Government to contribute a sum of rupees two lacs in each financial year for the maintenance of the Institute and such other sums as it may deem fit for special items of research or education work, publication, buildings and proper maintenance and development of the Institute. Section 9 of the Act provides for establishment of Institute Fund, whereas, Section 10 deals with the budget

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- A of the Institute. Section 16 of the Act empowers the Board to make rules not inconsistent with the provisions of the Act, whereas, Section 17 empowers the Board to make regulations consistent with the Act and the Rules framed thereunder. The relevant provisions of the Act read as under:
- B “**6. Functions of the Board.** – (1) The Board shall be the supreme governing body of the Institute and shall exercise all the powers of the Institute.
- (2) Subject to the provisions of this Act the Board shall, in particular–
- C (a) hold, control and administer the property and the funds of the Institute;
- (b) determine the form, provide for the custody and regulate the use of the common seal of the Institute;
- (c) determine and regulate all matter concerning the Institute;
- D (d) administer any funds placed at the disposal of the Board for specific purposes;
- (e) create posts and appoint officers and other employees of the Institute and define their duties and provide for the filling of temporary vacancies;
- E Provided that no post the total emolument of which exceeds Rs. 1,000 per month shall be created without the previous sanction of the State Government;
- F (f) have power to accept transfers on behalf of the Institute of any movable or immovable property to and for the purposes of the Institute.

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- 8. Payment to Institute.** - (1) The State Government shall contribute to the institute a sum of two lakhs of rupees in each financial year for the maintenance of the institute.
- (2) The State Government may contribute from time to time such additional sums to the Institute as it may deem fit for special items of research or educational work, publication, buildings and for the proper maintenance and development of the Institute.

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9. The Institute Fund. - (1) There shall be established a Fund to be called the Anugraha Narayan Sinha Institute Fund which shall be vested in the Institute to which shall be credited-

- (a) the balance, if any, standing to the credit of the Anugraha Narayan Sinha Institute of Social Studies, Patna, on the date of commencement of this Act; A
- (b) all moneys contributed to the Institute by the State Government; B
- (c) all moneys received by or on behalf of the Institute from the Central Government;
- (d) all moneys received by or on behalf of the Institute by way of grants, gifts, donations, benefactions, bequests or transfers; C
- (e) all interests and profits arising from any transaction in connection with any money belonging to the Institute;
- (f) proceeds from the sale of the journals, pamphlets and books; and D
- (g) all moneys received by the Institute in any other manner or from any other source.

(2) All moneys credited to the Fund shall be deposited or invested in such manner as the Institute may, with the approval of the State Government, decide. E

(3) The Fund shall be applied towards meeting the expenses of the Institute including expenses incurred in the exercise of its powers and discharge of its functions under this Act.

10. Budget. - (1) The Director shall, on or before the tenth day of August each year, cause to be prepared and laid before the Board, in such form as may be prescribed by the Board, the budget estimate of the income and expenditure of the Institute for the next financial year. F

(2) The Board shall, as soon as may be after the tenth day of August but not later than the first day of the following September, examine and approve the estimate with or without modification as it may deem fit and shall forthwith submit a copy thereof to the State Government. G

A (3) The Board may from time to time during the financial year reduce the amount of any item of budget grant or transfer such amount or a portion thereof to any other item of budget grant:

Provided that the Board shall have no power to transfer any non-recurring grant for recurring expenditure:

B [Provided further that the Board shall have no power to transfer from one item to another item an amount exceeding 20 per cent of the original grant under any item.]

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C **12. Accounts and audit.** - (1) Subject to any rules made by the State Government in this behalf, the accounts of receipts and expenditure of the Institute shall be kept in such manner and in such form as the Board may from time to time prescribe.

D (2) The Board shall, as soon as may be after closing its annual accounts, prepare an annual statement of accounts in such form as the State Government may from time to time prescribe and forward the same to the Accountant-General, Bihar, by such date as the State Government may, in consultation with the Accountant-General, Bihar, determine.

E (3) The accounts of the Institute shall be audited by the Accountant-General, Bihar, or some other officer appointed by him in this behalf and the Board shall take suitable action on the matters arising out of the audit report.

F (3A) The State Government may call upon the Institute to adopt concurrent audit by the Chief Controller of Accounts and Audit of the State Government.

G (4) The Board shall forward the annual accounts of the Institute together with the audit report thereon to the State Government and the State Government shall cause the same to be laid before the Legislature of the State.”

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H 4. In terms of Section 16 of the Act, the Anugraha Narayan Sinha Institute of Social Studies, Rules 1966 (Rules) were framed by the Board. “Pay” is defined in Rule 2(xii), whereas Rule 9 provides for maintenance

of Institute's provident fund and Rule 19 provides for amendment of the Rules at any time by 2/3 majority of the members at the meeting of the Board.

5. In terms of Section 17 of the Act, the Anugraha Narayan Sinha Institute of Social Studies, Patna Regulation, 1966 (Regulations) have been framed, which *inter-alia* empowers the Board to sanction Dearness Allowance; House Rent Allowance and also the service conditions of the employees of the Institute. Regulation 9 empowers the Board to create such posts as may be necessary and may fix scale of pay and allowances for posts subject to Section 6 of the Act. In terms of Clause 16 of the Regulations, Staff Service Condition Rules have been framed, however, such Rules do not provide for payment of pension.

6. The Board in its meeting held on 15.02.1985 passed the following resolution:

“The Board accepted the recommendation of the Committee on Retirement Benefits dated 11.2.85 and decided that the scheme as prepared may be implemented, provided that the scheme as reported would be operated from Institute resources and that no separate grant would be sought for it from the Government.....”

7. In this factual background, 27 petitioners (respondents 1 to 27 herein), in the present appeal invoked the writ jurisdiction of the High Court for a direction to the respondents (appellants herein) to pay the arrears as well as current pension on the month to month basis which has been stopped from the month of January 2014. The Writ Petition was dismissed on 20.06.2017 holding that the resolution of the Board dated 15.02.1985 was inconsistent with the Act and Rules, therefore, the writ petitioners were not vested with any legal right. Correspondingly, there is no legal obligation on the State to pay and that a writ of mandamus cannot be issued to the authority of the State to act contrary to law. It was also held that, the payment of pension/family pension by the State for the last few years is an illegality, the same cannot be directed to be perpetuated by an order of the Court.

8. However, an intra Court appeal was allowed on 13.03.2018 noticing that the Government of Bihar has earmarked grants under the pension head during 2004-05 to 2010-11. It was held that though the recommendations of the Committee on retirement benefits may be

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- A implemented, provided that the scheme is operated from the Institute's resources, but the fact remains that the liability on account of pension was duly mentioned in the annual budget of the State Government, therefore, such release of the funds by the State Government will be in the nature of grant as envisaged under Section 9(g) of the Act. The State Government would be estopped from saying that it never considered payment of pension as a responsibility after about 30 years. The Government approved the budget and provided additional funds to meet the liabilities, therefore, it would amount to consideration and acceptance of responsibility, may be in form of grants only.
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- C 9. Learned Counsel for the appellant argued that the resolution of Board was that the Retirement Benefit Scheme was to be operated from the resources of the Institute and that "no separate grant would be sought for it from the State Government". Therefore, the financial burden of the Retirement Benefit Scheme cannot be foisted upon the State. The pension was resolved to be borne by the Institute from its own funds. Still further, such resolution of the Board was not approved by the State Government creating extra financial liability on the State.
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- E 10. It is argued that in terms of Section 8 of the Act, the State Government is to contribute a sum of rupees two lacs in each financial year or such other sums for research or education work, publication, buildings and for proper maintenance and development of the Institute. Such provision does not contemplate payment of recurring expenditure of pension which is not contemplated by Section 8 of the Act. The money contributed by the State Government is one source of the Institute funds. The Board has limited power to transfer funds from one item to another item exceeding 20 per cent of the original grant under any item.
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11. It is further pointed out that the State Government has disbursed grant from the year 2002-03 upto 2010-11 which included the break up of pension but it was a mistake, which was rectified from the year 2011-12. It is contended that the State Government can grant funds under the heads (1) Grant-in-aid for Salary, (2) Grant-in-aid for creation of infrastructure, (3) Grant-in-aid other than salary and infrastructure. Therefore, some amount released towards pension in certain years including in terms of an order of this Court will not create any right in favour of the writ petitioners as the role of the State Government is to give grants as provided in Section 6 of the Act but such grant cannot be claimed as matter of right.

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12. On the other hand, the learned counsel for the Institute-respondent No. 28, submitted that the State Government has been releasing Grant-in-aid including amount towards pension since the Board has passed the resolution in the year 1985. Reference was made to communications dated 09.09.2010 and 29.03.2005. It is also pointed out that the Chief Minister of the State Government presided over the meeting of the Board on 28.05.1985, wherein, the poor financial condition of the Institute was discussed. It was resolved that the three alternative schemes of retirement benefits, i.e. (i) Contributory Provident Fund; (ii) Contributory Provident Fund-cum-Gratuity; (iii) General Provident Fund-cum-Pension-cum-Gratuity including benefit of commutation of pension will at all times be the same as provided for in the statutes and Rules of Patna University from time to time.

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13. It is contended that contribution towards the amount of pension has created legitimate expectation of the employees of the Institute that they are entitled to pension at par with the employees of Patna University. Thus, the employees have legitimate expectations of receipt of pension from the State Government. Therefore, the order passed by the Division Bench of the High Court does not call for any interference.

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14. On the other hand, Mr. V. N. Sinha, learned senior counsel appearing for the respondent Nos. 1 to 27 submitted that the State Government is bound to disburse the amount necessary for payment of pension as was being done from the date when the resolution was passed in the year 1985. Therefore, it is too late for the State to turn around to take a plea that the responsibility of the pension amount is not of the State Government.

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- A 15. Section 6 of the Act empowers the Board to hold control and administer the property and the funds of the Institute. The Board is further empowered to create posts and appoint officers with a condition that a post of which emoluments exceed rupees one thousand per month shall not be created without the previous sanction of the State Government. Therefore, the Board has freedom to create posts and to hold, control and administer its property and the funds, but the post carrying an emolument of rupees one thousand per month or more cannot be created without the previous approval of the State Government. Though the proviso to Section 6(2) of the Act requires approval of the State Government in respect of creation of post carrying pay of more than Rs.1000/-, but the intention is that any financial expenditure of recurring nature would require the approval of the State Government. Therefore, if the amount of pension exceeds rupees one thousand per month, the same could not be claimed from the State Government as a right without approval. The State Government cannot be called upon to bear the burden of the pension as such scheme was not approved or even sought for.
- B The provision of payment of pension in the Budget of the State Government is a voluntary act not enforceable by a writ of mandamus. The release of grant is in discretion of the grantor and cannot be forced by the grantee.
- C 16. It is true that in certain financial years as per documents on record, the amount of pension was specifically mentioned while granting grant to the Institute, but such amount is in discretion of the State and cannot be enforced by a writ of mandamus. There is no obligation on the State to disburse the grant towards the pension amount in terms of the Act or the Rules or even in terms of the resolution of the Board.
- D 17. Sub-Section (1) of Section 8 of the Act mandates the State Government to contribute a sum of rupees two lacs in each financial year for the maintenance of the Institute, whereas, sub-Section (2) empowers the State Government to contribute from time to time, such additional sums as it may deem fit for special items of research or education work, publication, buildings and for proper maintenance and development of the Institute. Such payment for the special projects, is in discretion of the State Government in view of the object for which the grant is to be disbursed, but sub-Section (2) does not include disbursement of the amount of pension as the contribution is for limited purpose which is not recurring in nature.
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18. The money contributed to the Institute by the State Government is one source of the fund of the Institute fund. Section 9(3) of the Act provides that the funds shall be applied towards meeting the expenses of the Institute including expenses incurred in exercise of its powers and discharge of its functions under the Act. Therefore, the retirement pension scheme, at best can be treated to be a part of obligation of utilization of funds of the Institute but such obligation to bear the amount of pension fund is not on State Government as it is not mandated either by Section 8 or Section 9 of the Act.

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19. The argument of learned counsel for the Institute is that the State Government has provided funds for payment of pension for the last many years, therefore, the Institute and the employees of the Institute have legitimate expectations to receive the amount of pension, is again not tenable.

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20. In the judgment reported as *Union of India & Ors. v. Hindustan Development Corporation & Ors.*¹, it was held that a pious hope even leading to moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. It was held: -

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“28. Time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense.

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¹(1993) 3 SCC 499

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33. On examination of some of these important decisions it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision.....

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35....It can therefore be seen that legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. It would thus appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. In other words such a legal

obligation exists whenever the case supporting the same in terms of legal principles of different sorts, is stronger than the case against it. As observed in *Attorney General for New South Wales case*: “To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law.” If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference.....”

21. In a judgment reported as *Ram Pravesh Singh and Others v. State of Bihar and Others*², the Court was examining the decision of the State Government that the assets and the liabilities of a Society should be transferred to the State Electricity Board, but not the services of the employees to the Board. It was the said decision of the State which came up for consideration before this Court. It was held that the Board never agreed nor decided to take services of any of the employees of the Society. Therefore, it cannot be said that there was any regularity or predictability or certainty in action which can lead to a legitimate expectation. It was held:-

“22. The Board had never agreed nor decided to take services of any of the employees of the Society. In fact, it is not even the case of the appellants that the Board had at any point of time held out any promise or assurance to absorb their services. When the licence of the Society was revoked, the State Government appointed a committee to examine the question whether the Board can take over the services of the employees of the Society. The Committee no doubt recommended that the services of eligible

²(2006) 8 SCC 381

- A and qualified employees should be taken over. But thereafter the State Government considered the recommendation and rejected the same, apparently due to the precarious condition of the Board which itself was in dire financial straits, and was contemplating retrenchment of its own employees. At all events, any decision by the State Government either to recommend or direct the absorption of the Society's employees was not binding on the Board, as it was a matter where it could independently take a decision. It is also not in dispute that for more than two decades or more, before 1995, the Board had not taken over the employees of any private licensee. There was no occasion for consideration of such a course. Hence, it cannot be said that there was any regularity or predictability or certainty in action which can lead to a legitimate expectation."
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22. In view of the above judgments, legitimate expectation is one of the grounds of judicial review but unless a legal obligation exists, there cannot be any legitimate expectation. The legitimate expectation is not a wish or a desire or a hope, therefore, it cannot be claimed or demanded as a right. The payment of pension in the past will not confer an enforceable right in favour of the Institute or its employees.

23. Thus, the resolution of the Board of the Institute to implement a retirement benefit scheme from its own resources will not bind the State Government to pay the amount of pension to the employees of the Institute. The employees of such Institute cannot be treated at par with the employees of the State Government nor the State can be burdened with the responsibility to pay pension to the employees of the Institute. Consequently, we find that the order of the Division Bench is not legally sustainable. Hence, we allow the appeal and dismiss the Writ Petition.

The pending applications, if any, shall stand disposed of.