

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2285 of 2016
IN
Civil Writ Jurisdiction Case No. 16664 of 2016**

- =====
1. Kamla Pati Singh Son of Late Hanuman Singh resident of Village- Barej, P.S.- Mohania, District- Kaimur at Bhabhua.
 2. Uday Kumar son of Late Kedar Singh resident of Village- Chechaul, P.S.- Naubatpur, District- Patna.
 3. Rabindra Kumar Sinha Son of Late Ram Krishna Prasad Sinha resident of Hope Ananda Apartment, Flat No.204, Anandpuri, P.S.- Srikrishnapuri, District- Patna.
 4. Narendra Kumar son of Late Sidheshwari Prasad Sinha, resident of Sidhi Sadan, Juran Chapra, Road No.3, P.S.- Brahmpura, District- Muzaffarpur.
 5. Krishna Mohan Prasad Singh Son of Late Mahendra Narain Prasad Singh resident of Village- Ektara, P.S.- Arer, District- Madhubani.

.... Appellant/s

Versus

1. The State of Bihar
2. The Secretary, Road Construction Department, Govt. of Bihar, Patna
3. The Principal Secretary, Department of Finance, Govt. of Bihar Patna
4. The Secretary, Rural Works Department Govt. of Bihar, Patna
5. The Deputy Secretary (Management Cell), Road Construction Department, Govt. of Bihar Patna.
6. The Under Secretary, Personnel Claim Fixation Cell, Department of Finance, Govt. of Bihar Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Y.V. Giri, Sr. Advocate

For the Respondent/s : Mr. Ashok Kr. Dubey- AAG11

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 27-04-2017

Seeking exception to an order dated 30.11.2016, passed by the learned Writ Court in C.W.J.C. No.16664 of 2016 refusing pay protection to the petitioner by holding that the petitioners cannot take benefit of Rule-39 of the Bihar Service Code as they were not



Government servants during the period in question, this appeal has been filed under Clause 10 of the Letters Patent.

The case has a checkered history and, therefore, it would be appropriate to detail, in nut shell, certain relevant facts for appreciation of the dispute in its right perspective.

The petitioners, who are degree holders (Civil Engineers), initially in the years 1981-1985, were engaged as Junior Engineers in the Regional Engineering Organization (R.E.O.) and N.R.E.P. They continued to work and thereafter they were appointed as Assistant Engineers on *ad hoc* basis on 27.6.1987.

In fact, vide communication, Annexure-2, dated 15.6.1987, issued by the Rural Development Department, Bihar, 242 posts of Assistant Engineers were sanctioned in the Department. The roster for this appointment was cleared by the Cabinet and it was decided to fill up these posts from the degree holder Junior Engineers and, accordingly, the process of selection was undertaken and the petitioners were appointed as Assistant Engineers on *ad hoc* basis on 27.6.1987 in the Road Construction Department vide order Annexure-4. This order would go to show that by this notification, more than 146 persons were appointed, which includes the five petitioners in these cases. After their initial engagement as degree holder Junior Engineers on daily wages and till their appointment as



Assistant Engineers on *ad hoc* basis vide Annexure-4 on 27.6.1987, the petitioners were continuously working. After their appointment as Assistant Engineers, they also passed the departmental examination, including the professional examination and the Hindi Noting and Drafting Examination between 1988 to 1990 and after passing of these examinations, they were granted the appropriate increments from time to time every year and they continued to work. Subsequently, they were regularized and absorbed in the regular service on 28.3.2012, Annexure-5. In this order, Annexure-5 dated 28.3.2012, it was clearly stipulated that the period of service rendered as *ad hoc* employees shall be counted for the purpose of pension and retiral benefits and *post facto* sanction was also given for regularizing the entire period of *ad hoc* services and for granting pay protection with the concurrence of the Finance Department. The petitioners continued to work thereafter. It seems that as there were certain discrepancies in the orders of regularization, and it was the case of the petitioners that the order, Annexure-5 dated 28.3.2012 was not in consonance with the directions issued by this Court in C.W.J.C. No.2798 of 2009, decided on 27.1.2012, therefore, contempt application M.J.C. No.3506 of 2012 was filed. This contempt application was also disposed of, but all of a sudden, it is the grievance of the petitioners that, by a corrigendum issued on



13.5.2014 certain conditions have been deleted on the advice of the Finance Department. It is said that the aforesaid corrigendum was issued and the condition of pay protection was deleted.

Be that as it may, contending that this was not proper, the matter was taken up in a writ petition before this Court being C.W.J.C. No.9401 of 2005 and it was indicated that the matter is being considered by the Cabinet and, therefore, the writ petition was disposed of, but finally vide impugned notification dated 12.9.2016 as the benefit of pay protection earlier granted vide notification dated 28.3.2012 has been withdrawn, the writ petition was filed with a grievance that by virtue of this the basic pay of the petitioners, which was Rs.24390/- has now been reduced to Rs.14880/-. This is contrary to Rule-39 of the Bihar Service Code and, therefore, the writ petition was filed. Various grounds were raised in the writ petition to say that the petitioners were entitled for pay protection and in the writ petition it was specifically pleaded that while along with the petitioners various other employees were appointed as *ad hoc* Assistant Engineers on 27.6.1987, those persons were also initially appointed along with the petitioners as Assistant Engineers, but after re-organization of the State and creation of the new State of Jharkhand in the year 2000, some of the employees who were identically situated were allocated and were transferred to the State



of Jharkhand and when in their cases a proposal was made to terminate their services, they challenged the same before Jharkhand High Court.

The writ petition was initially dismissed by the learned Single Bench, but a Division Bench of Jharkhand High Court in L.P.A. No.256 of 2011, decided on 8th of November, 2011, granted relief to the employees. It was said that they have worked for more than 30 years ever since they were appointed, they are discharging permanent nature of duties and they have been paid their salaries and other service benefits out of the budgeted allocation without any objection, therefore, they were directed to be taken back with all consequential benefits. This order passed by Jharkhand High Court in L.P.A. No.256 of 2011 (Kamal Prasad & Ors. vs. State of Jharkhand & Ors.) was challenged before the Hon'ble Supreme Court in S.L.P. (c) No.266 of 2012 (State of Jharkhand & Ors. vs. Kamal Prasad & Ors.) and by a detailed judgment rendered by the Hon'ble Supreme Court on 23.4.2014, the S.L.P. filed by the State of Jharkhand was dismissed. As a consequence thereof, the employees who were working in Jharkhand and who were appointed along with the petitioners and were identically situated, got the benefit of being treated as regular employees from the date they were appointed even though as *ad hoc* Assistant Engineers, but in the case of the



petitioners, the benefit of pay protection is not being granted and, therefore, claiming the said benefit, the writ petition was filed.

The learned Writ Court took note of the provisions of Rule-39 of the Bihar Service Code and held that pay protection is available only to such employees who are Government servants and as prior to their *ad hoc* appointment or absorption on 28.3.2012, the petitioners were not Government servants, they cannot get the benefit of pay protection. On this count, the writ petition was dismissed and this appeal has been filed.

Shri Y.V. Giri, learned Senior Counsel, made a two fold submission before us. It was his contention that merely because the petitioners were shown as appointed on *ad hoc* basis while appointing them as Assistant Engineers on 27.6.1987 vide Annexure-4, the petitioners would not become temporary or *ad hoc* employees because even though this appointment is termed as '*ad hoc* appointment', it is, in fact, a regular appointment after following the due process of law and once the petitioners were absorbed on 28.3.2012 and when initially in the order dated 28.3.2012 the petitioners were granted the benefit of pay-protection, counting the entire service for calculating pension and other benefits, it is argued by him that in denying the benefit of pay protection under Rule-39 of the Bihar Service Code, an error has been committed. He further



argues that in this case more than 200 employees were appointed initially as Junior Engineers and thereafter on *ad hoc* basis as Assistant Engineers by the Bihar Government. The employees who were allocated to the Jharkhand after re-organization of the State have reaped the benefit of regular service by virtue of the orders passed by the Jharkhand High Court and the Hon'ble Supreme Court and now similar benefit are being denied to the petitioners even though they are also working continuously for more than 30 years. Taking us through the observations made by the Jharkhand High Court in L.P.A. No.256 of 2011 and by the Hon'ble Supreme Court in the case with regard to Jharkhand employees, Shri Giri argues that employees identically situated working in the State of Jharkhand are being treated differently in comparison to the petitioners and in denying them the benefit of pay protection an error has been committed which should be granted by this Court.

Shri Ashok Kumar Dubey, learned Counsel appearing for the State Government vehemently opposed the aforesaid prayer and invited our attention to an order dated 20th of May, 2015 passed by a co-ordinate Bench of this Court in Letters Patent Appeal No.360 of 2014, dismissal of petitioners' earlier writ petition being C.W.J.C. No.9401 of 2015 by a Bench of this Court and tried to argue that the petitioners are not entitled to any relief. It was tried to be emphasized



that as the benefit of pay protection is available only to employees who are Government servants and as the petitioners from their initial date of appointment till absorption as Assistant Engineers after the orders were passed on 28.3.2012 were only working as *ad hoc* employees, they cannot claim to be regular employees and, therefore, in rejecting their claim neither the writ Court nor the State Government has committed any error and, accordingly, he argues that no relief can be granted to the petitioners.

On the contrary, in rebuttal Shri Giri invites our attention to the benefit granted to the employees by the Jharkhand Government and tried to indicate that employees appointed by common orders and absorbed by common orders are being discriminated and treated differently. All were appointed and absorbed by the Government of Bihar, but only due to a circumstance that some employees went to State of Jharkhand they were granted better benefit in comparison to the petitioners and in spite of order passed by the Hon'ble Supreme Court, benefit is being denied to the petitioners.

We have heard learned counsel for the parties at length and we have also taken note of various aspects of the matter. At the very outset, it would be appropriate to take note of two objections raised on behalf of the State Government to say that in view of the



order passed in C.W.J.C. No.16664 of 2016 and L.P.A. No.360 of 2014, no relief can be granted to the petitioners and the second objection with regard to dismissal of writ petition bearing C.W.J.C. No.9401 of 2001.

As far as C.W.J.C. No.9401 of 2015, which was dismissed by the learned Writ Court on 16.9.2016 is concerned, in this writ petition petitioners had claimed similar benefit, but when this writ petition was pending, it was informed to this Court that the Cabinet has again taken a decision and the notification dated 12.9.2016 has been passed. As this notification dated 12.9.2016 was passed during the pendency of the writ petition, the learned Writ Court held the writ petition C.W.J.C. No.9401 of 2015 to have been rendered infructuous and granted liberty to the petitioners to challenge the order dated 12.9.2016 and, therefore, once the petitioners have challenged this order, now in these proceedings, the contention of the State Government that in view of dismissal of C.W.J.C. No.9401 of 2015 no interference can be made, is wholly misconceived. This objection cannot be sustained and is, accordingly, rejected.

As far as the decision in C.W.J.C. 16664 of 2016 and L.P.A No.360 of 2014 are concerned, this writ petition was filed claiming benefit of seniority and promotion at par with other



Assistant Engineers which has been rejected. The case for seniority and promotion is entirely different from that of pay protection. The claim made in the earlier writ petition is entirely different and the claim for seniority as well as promotion under the assured career progression scheme has got nothing to do with grant of pay protection and, therefore, this objection of the State Government is also unsustainable. This now takes us to the moot question with regard to pay protection claimed by the petitioners. Pay protection is a concept for granting pay protection to an employee as is incorporated under Rule 39 of the Bihar Service Code which reads as under:

“39. Personal pay means pay granted to a Government Servant:-

- (a) to save him from a loss of substantive pay in respect of a permanent post other than a tenure post due to revision of pay or to any reduction of such substantive pay otherwise than a disciplinary measure, or
- (b) in exceptional circumstances, on other personal considerations.”

The learned Writ Court taking note of the words “Government Servant” and pay in respect of “permanent post” has held that prior to their regularization, the petitioners were neither Government servants nor permanent employees and, therefore, the benefit of pay protection cannot be granted to them. This is the only



reason that weighed with the learned Writ Court in rejecting the claim of the petitioners. However, we find that initially when the petitioners were appointed on *ad hoc* basis vide order Annexure-5 dated 28.3.2012, it was clearly stipulated in this order that the *ad hoc* period of service shall be counted for the purpose of pension and retiral benefit and *post facto* sanction was also granted for giving pay protection. However, now on a perusal of the counter affidavit filed by the State Government in this writ petition, we find that the only reason given in the counter affidavit is that the Finance Department has not approved grant of pay protection because it has been done without approval of the Cabinet. Except for the aforesaid, nothing has been indicated as to why the benefit of pay protection cannot be granted. The learned Writ Court, however, holds that the petitioners were not Government servants prior to their regularization and, therefore, they cannot get this benefit.

That being the position as the judgments rendered by the Jharkhand High Court and approved by the Hon'ble Supreme Court is relevant with regard to this aspect of the matter, we deem it appropriate to take note of these judgments as they are helpful in determining as to what was the nature of appointment and what was the nature of work done by the petitioners during the 30 years when they were treated as *ad hoc* employees after they were appointed as



Assistant Engineers on 27.6.1987. This very appointment as *ad hoc* Assistant Engineers on 27.6.1987 and the continuance of the employees for a period of 29 to 30 years has been taken note of and discussed in detail by the Jharkhand High Court and the Hon'ble Supreme Court with regard to the employees who were earlier working and appointed along with the petitioners in the State of Bihar, but due to bifurcation of the State went to the State of Jharkhand.

All the employees were initially appointed as Junior Engineers in the year 1981-85 and all were thereafter appointed as Assistant Engineers in the year 1987, in the year 2000 some of them became the employees of the State of Jharkhand and, it seems, due to some dispute arising out of allocation after re-organization of the State, a show cause notice was issued and the services of the employees in the State of Jharkhand were proposed to be terminated. They filed a writ petition. The writ petition was dismissed and, therefore, challenging the order passed by the learned Writ Court matter went to the Division Bench of the Jharkhand High Court in L.P.A. No.256 of 2011 and a Division Bench of Jharkhand High Court on 8th of November, 2011 found that the termination of service and the show cause notice is illegal, quashed the same and directed for the reinstatement of all the employees along with all



consequential benefits. As a consequence thereof, all these employees are working as regular employees in the Government of Jharkhand and the Division Bench of Jharkhand High Court itself after taking note of the law laid down in the case of Secretary, State of Karnataka vs. Uma Devi, (2006) 4 SCC 1, has held that these employees are entitled to be treated as regular employees from the date of their initial induction into service.

If we go through the judgment passed by the Division Bench of the Jharkhand High Court in L.P.A. No.256 of 2011, we find that the facts are narrated from para 4 onwards and the facts are not in dispute. The facts further go to show that after the employees like the petitioners were appointed as Junior Engineers in the State of Bihar, at that point of time it was not at all necessary for appointment of Junior Engineers to undergo the selection process through the Bihar Public Service Commission and, therefore, when advertisement was issued for appointment on the post of Assistant Engineers, all these persons applied in pursuance of advertisement No.13 of 1985 and all the petitioners herein, including the persons working in Jharkhand, participated in the process of selection and after regular selection held in pursuance of this advertisement No.13 of 1985, after following the due process as per law, they have been appointed in the year 1987, on the vacancies that were existing as on



31.12.1987. It is an admitted position that the employees, who were before the Jharkhand High Court and the present petitioners all formed one group or class, were identically situated and all were appointed as Assistant Engineers based on the same selection process conducted. It is, therefore, clear that the initial induction of the petitioners in the Department as Assistant Engineers was after following the process of selection and the Jharkhand High Court in para 9 holds that ever since their appointment in the year 1987 till 2011 when the employees in the State of Jharkhand were terminated, they continued to work, they were paid their salary and all other regular service benefits like increments and treating them to be regularly appointed, they were also transferred and, for all practical purposes, they were treated as regular appointees. The case of Uma Devi (supra) has been taken note of by the learned Division Bench of Jharkhand High Court and the learned Court after noticing various aspects of the matter and in para- 21 made the following observations:

“21. We have considered the submissions of the learned counsel for the parties and perused the facts of the case. We need not to reiterate the facts in detail except the fact that the petitioners were appointed by the State Government on the post of Junior Engineers in the year 1981 and that post was not the post for which any recommendation of the Public Service Commission was required is the admitted case. The petitioners were then given appointment on the post of Assistant Engineers by



the State Government in the year 1987, though on ad-hoc basis as well as this appointment was temporary and further more was for six months but the State Government for more than about 29 years from first appointment on the post of Junior Engineers and 23 years from the appointment on the post of Assistant Engineers had no intention to dispense with the services of these employees and, therefore, took no steps to dispense with the services of these employees.”

In para Nos.25 and 26 the learned Division Bench of the Jharkhand High Court has held as under:

“25. Be that as it may, the State either Bihar or Jharkhand never intended and never showed its intention to dispense with the services of the writ petitioners for almost 30 years and the petitioners are qualified persons, given appointment by the State Government initially on the post of Junior Engineer for which no recommendation of the Public Service Commission was required and then they were given appointment by the State Government on the post of Assistant Engineers. These persons continued in service for almost 30 years by the State Government (Bihar and Jharkhand both) not under any stay order passed by any Court and these employees, after 30 years of their service how can be rendered jobless when not only their life but life of their entire family is dependent upon this job. It is submitted that these employees should compete with other eligible persons and may get the job and in some of the cases Courts directed and the State Governments relaxed the age. Question arises is: Whether such plea is available to employer after taking services of employees for 20-30 years? Another question relevant to answer first question would be: whether asking a qualified person of 20-30 years ago to compete with freshers and that to give examination



or face the interview and questions of present day after leaving studies 20-30 years ago is a competition among unequals what to say of fair competition. Whether academic excellence will prevail over actual practical excellence of 20-30 years. In our humble opinion answer will be in favour of actual experience in such special circumstance although this principle cannot be applied to justify the service of any employee who lacks basic educational qualification and could get the appointment and served in technical field. If in the present fact of the case State is permitted to dispense with the services of such employees then it will be permission to give employer benefit of their own wrong and irreparable loss to employees who did not commit any wrong in the last about thirty years of service and reached a stage from where they can be a jobless-breadless person in a State who should be model employer as well as a Welfare State. The fact must remain in mind that in this case employees were continued in service, voluntarily by the State and not because of any compulsion upon the State to keep these employees in service. If the State is permitted to remove such employees then it is recognising right of employer State to “use and through the employees” which we cannot recognise.

26. The contention raised by the learned Advocate General was that yet there is no precedent wherein any regularization has been ordered on the post for which recommendation of the Public Service Commission was required and therefore, the petitioners who are seeking regularisation on the post, for which recommendation of Public Service Commission is required cannot be given, would appear to be attractive but we are not impressed. State Public Service Commission examine suitability of eligible candidates for the post and recommends the names of suitable candidates for appointment and this case is not the case of the State that these employees who are eligible



to hold post and rendered service on the post are not suitable persons to hold post. Even if, any recommendation of Public Service cannot be dispensed with even then suitability as one time measure, can be examined by the Public Service Commission without asking the employees to compete with the freshers of the present day. It is suffice to state that Law is for equality of justice and where equity and justice are pitted against the technicalities then equity and justice are required to be given precedence over the technicalities. In a case where regularisation is required to be made in peculiar circumstances that Government's case is not that posts are not available it is also not the case that work is not and posts though are available, the Government voluntarily kept the employees in employment for about 30 years without compulsion or order of Court, employees were paid not only regular salary but increments also consequential there is minimal financial burden. Government never wanted to remove these employees and sole reason given for present removal is that appointment given by the Government to these employees is now treated as illegal and the Government has power to terminate the services of these employees, therefore, State is terminating service. In such facts the State's first duty in consonance with Uma Devi's case would have been to find out a way to make the appointment regular instead of taking help of technicalities of law only in one way which is not expected of a model employer and a Welfare State. It will be worthwhile to notice here that as back as in the year 1986 an Act "The Bihar Gazetted Officers (Ad-hoc Appointments Regulations) Act, 1987" was enacted to regularize the services of the persons whose appointments could have been given only on the recommendation of the Public Service Commission. By that act such employees who were appointed up to 30th June, 1986, their services were regularized on the posts which could have been filled on



recommendation of Public Service Commission and these petitioners are appointees of the year 1987. If these petitioners' services could have been regularised by enacting such Act as again one time measure which was required to be taken by the State Government in compliance of the direction given by the Hon'ble Supreme Court in Umadevi's case and accepted in the case of M.L. Kesari & Ors."

Thereafter, the petition was allowed and they were directed to be taken back in service and treated to be regular employees and granted all the benefits. When this judgment of the learned Division Bench was challenged by the State of Jharkhand before the Hon'ble Supreme Court, the Hon'ble Supreme Court re-examined the entire issue and available at page-92 as Annexure-13 is a detailed order passed by the Hon'ble Supreme Court running into more than 51 pages wherein various aspects of the matter have been taken note of. In para 18, after taking note of the submissions of learned counsel for the parties, the Hon'ble Supreme Court formulated four questions which arose for consideration in the Civil Appeal. The four questions formulated by the Hon'ble Supreme Court reads as under:

"18. With reference to the above said rival legal contentions, urged on behalf of the parties the following points would arise for consideration in these Civil Appeals:-

- (1) Whether the impugned judgment is correct in holding that the respondents-employees are entitled for the benefit of *Umadevi's* case (supra)



as they rendered more than 10 years of service in the State Government of Jharkhand without intervention of the Court?

- (2) Whether the impugned judgment passed by the Division bench of High Court is vitiated on account of erroneous finding or suffers from error in law?
- (3) Whether the impugned judgment warrants interference by this Court in exercise of power under Article 136 of the Constitution of India on the grounds urged in these appeals?
- (4) What orders?

Thereafter, points 1 and 2 have been taken up for consideration. Judgment in the case of *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.*, (1985) 3 SCC 545, was referred to and it has been held that the finding recorded by the High Court with regard to this issue is correct. It cannot be termed as erroneous or suffering from error in law. The findings recorded by the High Court were approved and after analyzing the legal principle, the Hon'ble Supreme Court goes to hold as under in page 49 of the judgment:

“In view of the legal principles laid down in the aforesaid decisions, we are of the opinion that the decision of the High Court does not fall in either of the categories mentioned above which calls for our interference. The Division Bench of the High Court having regard to the glaring facts that the respondent-employees have continuously worked in their posts for more than 29 years discharging permanent nature of duties and they have been paid their salaries and other service benefits out of the budget allocation, no objection was raised by the CAG in this regard and therefore, it is not open for the appellants to contend that the law



laid down in *Uma Devi's* (supra) has no application to the fact situation. The action of the appellants in terminating the services of the respondent-employees who have rendered continuous service in their posts during pendency of the Letters Patent Appeals was quashed by the High Court after it has felt that the action is not only arbitrary but shocks its conscience and therefore it has rightly exercised its discretionary power and granted the reliefs to the respondent-employees which do not call for our interference. Therefore, we are of the opinion that this Court will not interfere with the opinion of the High Court and on the contrary, we will uphold the decision of the High Court both on factual and legal aspects as the same is legally correct and it has done justice to the respondent-employees.”

(emphasis supplied)

It is held by the Hon'ble Supreme Court that the employees have continuously been working on their posts for more than 29 years. It is the permanent nature of duties. They have been paid salaries and other service benefits out of the budget allocation. No objection was raised in this regard. For the aforesaid reasons, the finding of the High Court is approved.

If that be the position, with regard to the employees at Jharkhand, and if it is held by the Jharkhand High Court and approved by the Hon'ble Supreme Court that in view of the judgment rendered in the case of Uma Devi (supra) the employees are deemed to have been regularized after completing ten years of service and when the Hon'ble Supreme Court goes to hold that since the employees have continuously worked for more than 29 years, it



is the permanent nature of duties, by no stretch of imagination can it be held or observed that the employees are not Government servants, or are only temporary employees. In fact, for all practical purposes, the employees in State of Bihar and State of Jharkhand were appointed on permanent post treating them to be permanent employees and when the services of the employees were regularized on 27.6.1987 vide Annexure-4, they were granted the benefit of pay protection along with continuity of service. Now the State is virtually rescinding from the same only because the Finance Department has objected to it. This is not permissible. The petitioners have rendered continuous service for more than 30 years. At least for the purpose of pay protection they have to be treated as Government servants as the benefit of granting pay protection is to save a person from loss of substantive pay in the event of exceptional circumstances or on other personal consideration. This is a case demonstrating and evidencing exceptional circumstances inasmuch as the employees have worked for more than 30 years uninterruptedly, they were granted benefit of pay and allowance, increments and all other monetary benefits treating them to be regular employees and now when they are regularized, their pay is being reduced by more than Rs. 10,000/- (ten thousand) by contending that they cannot get pay protection. This act of the State Government is unreasonable and arbitrary and if



we analyze it in the backdrop of the benefit granted to the employees of Jharkhand and the observations made by the Hon'ble Supreme Court with regard to their case, there is no reason as to why petitioners, who are identically situated and only because of a circumstance created are working in the State of Bihar and the other employees went to the State of Jharkhand, are being treated differently, employer in both the States were appointed together, formed a homogenous class and only as a result of bifurcation of the State some of them have gone to the Jharkhand and if they have received the benefit of being treated as regular employees, , the petitioners are also entitled to be treated as regular employees or Government servants for grant of benefit of pay protection.

In our considered view, the learned Writ Court has not taken note of all these factual aspects of the matter while dismissing the writ petition. Merely on the ground that petitioners are not Government servants, the benefit is denied. But the fact remains that even if the petitioners were treated as *ad hoc* but, for all practical purposes and in fact, they were Government servants and, therefore, the benefit of pay protection should be available to them. Even if the benefit of seniority or grant of A.C.P. may not be available to them, the pay protection should at least be granted to them as their substantive pay on their regularization should not be reduced. What



they got while termed as *ad hoc* by the State Government cannot be taken away when they are regularized and if that be the principle to be applied, the petitioners are entitled to the benefit.

Keeping in view the aforesaid, we allow this appeal, quash the order passed by the learned Writ Court and the impugned order passed by the State Government and direct them to grant pay protection to the petitioners as contemplated in Rule 39 of the Bihar Service Code. However, grant of this pay protection will not mean that the petitioners would be entitled to seniority or promotion in the cadre in question. The same cannot be granted to them as the prayer identical in nature of the employees has already been rejected by a Division Bench of this Court in C.W.J.C. No.16664 of 2016.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

K.C.jha/-

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