

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.7231 of 2012**

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1. Rekha Jha Wife of late Subhash Chandra Jha Resident of Village- Dulha, P.S. Kewti-Runway, District- Madhubani.
  2. Ram Krishna Jha Son of late Shivnandan Jha Resident of Village- Dumra, P.S.- Brahmpura, District- Madhubani.
  3. Jay Nath Jha Son of Late Sadashiv Jha Resident of Village-Benipatti, P.S. Benipati, Distirct-Madhubani
  4. Arvind Kumar Thakur Son of Late Govind Thakur Resident of Village + P.O.- Balha Rasalpur, P.S.-Bajpatti, District-Madhubani
  5. Yogendra Kumar Mishra Son of late Alik Nath Mishra, Resident of Village +P.O.- Bhatsimar, P.S. Rajnagar, District- Madhubani.

.... .... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of General Administration, Government of Bihar, Patna.
2. The Principal Secretary, Department of Human Resources Development, Government of Bihar, Patna
3. The District Magistrate, Purnea

.... .... Respondents

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**Appearance:**

For the Petitioners : Mr. Y.V. Giri, Senior Advocate  
Mr. Pramod Mishra, Advocate

For the Respondents : Mr. Niraj Kumar Sinha, AC to PAAG 2

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**CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN**

**ORAL JUDGMENT**

**Date: 04-10-2017**

The present writ petition has been filed for a direction to the respondents to count the service period of the petitioners with effect from their initial appointment made between 1985-87 on the post of Non-Formal Education Supervisors under the Non-Formal Education Project, as the petitioners who have been appointed afresh on the post of Clerk by way of absorption along with several other retrenched Non-Formal Education Supervisors vide a policy decision of Government of



Bihar, due to which the service period of all the petitioners are reduced to less than 10 years.

2. The short facts of the case according to the petitioners are that they were appointed on the posts of Supervisor under the Adult and Non-Formal Education Project on 29.06.1985, 26.06.1985, 11.08.1985, 08.01.1986 and 04.05.1987 respectively, and started discharging their duties regularly. However, the Non-Formal Education Project was scrapped after 1990 and the services of the petitioners stood retrenched. Thereafter a policy decision was taken to absorb all the Non-Formal Education Supervisors on different sanctioned and vacant Class III posts and pursuant to which a seniority list of Non-Formal Education Supervisors was published vide letter No. 686 dated 16.04.2010 which included the name of these petitioners. Pursuant to Memo No. 1538 dated 21.08.2010 issued by the Department of Human Resources Development the petitioners submitted their joining before the respondent District Magistrate on 30.08.2010 and started discharging their duties.

3. Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the petitioners submits that the petitioners are entitled for pension by also taking into account the period worked between their initial appointment and their retrenchment in addition to the period they had worked after their absorption on and from 30.08.2010. It is submitted that the respondents are not justified in treating the absorption as



fresh appointment by not considering the earlier period they had worked prior to their retrenchment. In this regard attention has been invited to the provisions of Rule 103(d) of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Rules'), according to which abolition of posts or loss of appointment owing to reduction of establishment constitutes an exception in the matter of interruption in the service of a Government servant entailing forfeiture of his past service. Reliance is placed on the judgment dated 19.04.2011 passed in CWJC No. 20780 of 2010 and CWJC No. 20801 of 2010 wherein the said provision of Rule 103(d) has been interpreted in the context of Adult Education Programme, expressing the view that the period between retrenchment and subsequent absorption would not amount to interruption of service for the purposes of Rule 103(d) of the Rules.

4. Learned counsel for the respondents appears and has been heard. He fairly accepts that the issue at hand stands covered by the judgment dated 19.04.2011 in CWJC No. 20780 of 2010 and CWJC No. 20801 of 2010, relied upon by the petitioners.

5. Having heard the parties and on a consideration of the materials on record, this Court finds merit in the writ petition. This Court in its judgment dated 19.04.2011 passed in CWJC No. 20780 of 2010 and CWJC No. 20801 of 2010 after a detailed consideration of the matter and having interpreted the provisions of Rule 103(d) of the Rules, held as follows –



*“15. Admittedly, in the present case, posts of Supervisors were abolished consequent to decision of the Central Government in 1998, on account of which petitioners and other Supervisors came on road, which situation, in the opinion of this Court, is clearly covered by the expression “Abolition of post or loss of appointment owing to reduction of establishment” . Hence, this Court finds that the said sub-rule (d) of Rule 103 clearly comes to the aid of petitioners and others and not to aid of the respondents, as claimed by them, to deny them benefits of the period.*

*16. In the circumstances, the impugned order of the Principal Secretary dated 29.03.2010, as contained in Annexure-5, is unsustainable in law and the same is quashed. Respondents are directed to consider petitioners as continuing in service between 1992 to 1998 on notional basis only for the purpose of grant of monetary benefits from 1998 onwards and post retiral monetary benefits.*

*17. It is made clear that petitioners and other Supervisors shall not be entitled for salary of the period in any manner and shall not also claim any seniority over other Government servants. The period shall be counted in the service only for personal monetary benefits of the petitioners and nothing more.*

*18. These writ applications are allowed in the manner, as indicated above.”*

6. It may not be out of place to take note of memo no. 555 dated 29.03.2010 issued by the Human Resources Development Department (Annexure-4/1 series) wherein a similar view has been expressed.



7. In the above view of the matter, the respondents are directed to treat the petitioners as having continued in service by clubbing the two periods in question during which they have actually worked, for the purposes of post-retiral monetary benefits but, however, without entitlement for the purposes of salary and seniority during the intervening period when they were out of service.

8. The writ petition accordingly stands allowed.

**(Vikash Jain, J)**

Chandran/BT

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