

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.662 of 2018

In

Civil Writ Jurisdiction Case No.7231 of 2012

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1. Rekha Jha and Ors Wife of late Subhash Chandra Jha, Resident of Village-Dulha, P.S. Keoti-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. Benipatti, District- 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.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Department Of Human Resources Development, Gov
2. The Principal Secretary, Department of Human Resources Development, Government of Bihar, Patna, nam
3. The Principal Secretary, Department of Finance, Government of Bihar, Patna, namely Smt. Sujata Chat
4. The Director, Mass Education, Bihar, Patna, namely Sri Binodanand Jha.
5. The District Magistrate, Purnea, namely Sri Pradeep Kumar Jha.
6. The Accountant General, Bihar, Birchand Patel Marg, Patna namely Sri Suresh Kumar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Senior Advocate Mr. Pramod Mishra, Advocate
For the Opposite Party/s	:	Mr. P.K. Shahi, Advocate General Mrs. Binita Singh, SC 28 Mr. Vivek Anand Amritesh, AC to SC 28

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 31-07-2023

Heard Mr. Y.V. Giri, learned Senior counsel for the
petitioners and Mr. P.K. Shahi, learned Advocate General for the



State.

2. The present contempt petition has been preferred for the compliance of the order dated 04.10.2017 passed in CWJC No. 7231 of 2012 by which direction was given to the respondents to treat the petitioners as having continued in service by clubbing the two periods during which they actually served for the purpose of post retiral benefits without any entitlement of salary and/or seniority during the intervening period, they were out of service.

3. This Court deems it appropriate to incorporate the entire order dated 04.10.2017 in CWJC No. 7231 of 2012 which read as follows:

“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 1985-37 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 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 manher, 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.

4. Aggrieved, the State of Bihar preferred LPA No. 189 of 2018 which came to be dismissed on 20.06.2018 with the following observations:-

“Once in identical matters the issue has been decided and the employees working in the same project have been granted benefit and when the Writ Court has allowed the writ petition on consideration of these facts, we see no reason to deviate and take a different view now only because the State Government feels that the present petitioners were appointed in the project on temporary basis and when their services were discontinued after the project was over. Even if that be so, it was the State Government which took them back into



service and absorbed them in view of the policy decision as was done in the case of other employees who are petitioners in C.W.J.C. No. 20780 of 2010 and C.W.J.C. No. 20801 of 2010 and when benefit is granted to such similarly situated employees who were also appointed in the same project, we see no reason to deviate and discriminate in the case of the present petitioners. The Writ Court having followed the principles of law based on the earlier decision, we see no error in the order passed warranting reconsideration. In fact there is no substantial material available on record to show that the case of the present petitioners are different from the case of the earlier employees who were considered in C.W.J.C. No. 20780 of 2010 and C.W.J.C. No. 20801 of 2010.

The Letters Patent Appeal is, therefore, dismissed.”

5. Still aggrieved, Civil Appeal No. 544 of 2020 was preferred before the Hon'ble Supreme Court which was heard alongwith batch cases and disposed of on 07.02.2020 cases and relevant paragraphs are 27 and 28 which read as follows:-

27. The present appeal is directed



against an order passed by Division Bench of the High Court of Patna on 20 June, 2018 whereby LPA No.189 of 2018 filed by the State was dismissed relying upon an order passed by the Single Bench in CWJC No. 20780 of 2010 and CWJC No. 20801 of 2010 on 19th April, 2011 wherein referring to Rule 103 of Bihar Pension Rules, 1950, it was held that an interruption in service on account of the abolition of a post shall not entail forfeiture of the past service of a Government servant, i.e. the intervening period can be counted for pensionary benefits. In view of the said fact, the State was directed to consider the writ petitioners as continuing in service between 1992 and 1998 solely for the purpose of granting personal monetary benefits. The petitioners were not to be entitled to payment of salary for the period in any manner and neither claim any seniority over other Government servants.

28. After the aforesaid judgments, Balram Singh along with others filed CWJC No. 22208 of 2013 to claim back wages for the period from 1" October, 2001 to 3" July, 2007. The learned Single Bench allowed the writ petition on 22 August, 2016. Thereafter, LPA No. 2307 of 2016 was dismissed on 15 January, 2018. The said



orders were set aside by this Court in Baliram Singh. Therefore, the reliance of the High Court on an order passed at earlier stage on Baliram Singh no longer holds good. It may be noticed that in the State of Bihar, past services rendered by employees under the Project were taken into consideration for pensionary benefits. In view of the said fact, the present appeal is disposed of in the same terms as in Baliram Singh.

7. The case of the petitioners as submitted by Mr. Y.V. Giri, learned Senior Counsel is/are that so far as the pensionary benefit part is concerned, the same is/was not in dispute and after the dismissal of the CWJC No. 7231 of 2012 and LPA No. 189 of 2018, the State Government is duty bound to extend the pensionary benefits clubbing the two periods and failure to do so, they are liable for contempt proceedings.

8. It is their further case that the dues having not been settled so far as the pensionary benefit part is/are concerned, the State Government cannot go back and deny the said benefit.

9. It is the case of the petitioners as submitted by learned Senior Counsel that so far as the comment of the



Hon'ble Supreme Court in Civil Appeal No. 544 of 2020 in paragraphs 27 and 28 are concerned, that relates to the back wages which was taken up by the writ petitioners in CWJC No. 22208 of 2013, was allowed and the LPA No. 2307 of 2016 of the State was also dismissed which was finally set aside by the Hon'ble Apex Court. Thus, the order does not come to the rescue of the State Government.

10. It is important to incorporate brief facts of the case for the proper appreciation of the case:

(i) the selection of Non Formal Supervisors on honorarium were made on temporary basis till 1981-2001 whereafter the non formal education scheme came to end in the year 2001;

(ii) further, there is/was no certain period for retrenchment of the petitioners herein, who were selected in the scheme of different dates as also they left on different dates as per the necessity of the non formal education scheme;

(iii) subsequently, between 2010-12, the non formal honorarium Supervisors were absorbed and the conditions mentioned in memo no. 27 dated 12.01.2010 clearly incorporated that these are new appointments and further the person so appointed will be guided by the New Pension



Scheme.

11. Mr P.K. Shahi, learned Advocate General, Bihar submits that once the writ petition was dismissed, the State of Bihar preferred appeal before the Division Bench of Patna High Court which too was dismissed and that followed SLP No. 544 of 2018.

12. So far as the present petitioners is/are concerned, the learned AG took this Court to paragraphs 27 and 28 of the order passed in SLP No. 544 of 2018 (disposed of on 07.02.2020) to show that the Hon'ble Supreme Court hold that the order passed in Balram Singh having been set aside by it the same no longer holds good.

13. He as such submits that the entire case of the petitioner is/are based upon Balram Singh's case and as the same was set aside by the Hon'ble Supreme Court, the claim put forward by the petitioners in contempt petition need to be rejected.

14. He further took this Court to the letter of appointment in which it was clearly envisaged that this is a new appointment and the person so appointed will be covered by the new pension scheme. This according to them was never challenged. He as such submits that taken altogether all the



facts, the petitioners herein do not have any case and as such, the time has come to discharge the rule of contempt and dismiss the present contempt petition.

15. He further submits that petitioners preferred M.A. 712 of 2022 in Civil Appeal number 544 of 2020 in the case of **the State of Bihar Vs. Rekha Jha & others** for a direction upon the appellant-State of Bihar to implement the order/judgment dated 07.02.2020 passed by the Hon'ble Supreme Court in Civil Appeal No. 544 of 2020 and grant the pension, they are entitled to.

16. He took this Court to the prayer portion of the said petition which read as follows :-

“direct the Appellant/State of Bihar to implement the order/judgement dated 07.02.2020 passed by this Hon'ble Court in Civil Appeal No. 544 of 2019 and accordingly grant the pension they are entitled to.”

17. It is his submission that said Miscellaneous Application No. 712 of 2022 was taken up on 29/4/2022 and disposed of and the order read as follows:

“Miscellaneous Application stands dismissed. Pending application (s), if any, shall stand disposed of.”



18. He thus submits that the petitioners having not challenged the incorporation in their fresh letters of absorption that they will be guided by the new pension policy as also the observation of the Hon'ble Apex Court in Civil Appeal No. 544 of 2020 coupled with the fact that their prayer for directing the State to extend pension vide M.A. No. 712 of 2022 in C.A. No. 544 of 2020 having been dismissed, no contempt is made out.

19. Having heard the learned Senior counsel for the petitioners as also the learned Advocate General, Bihar this Court finds force in the submission put forward by the State.

20. The order of the Hon'ble Apex Court in C.A No. 544 of 2020 cannot be ignored wherein it was observed that *"reliance of the High Court on an order passed at earlier stage no longer holds good."*

21. Further, the petitioners were taken in as fresh appointees and after the implementation of New Pension Scheme which was/were also known to them but the same was/were never challenged.

22. Lastly, after the order passed by the Hon'ble Apex Court in C.A. 544 of 2020 on 07.02.2020 and the



petition submitted by the Bihar Non Formal Education Employees Union through its Convenor, Maheshwar Pathak for extending benefit of old pensionary benefits was taken up by the Education Department, Bihar Patna and vide reasoned order as contained in memo no. 985 dated 24.06.2020 signed by the Director, Mass Education cum Joint Secretary, Education Department, Bihar, the claim was rejected. (Annexure-6 to the show cause of the opposite Party No. 4)

23. Thus, in the considered opinion of this Court, no case of contempt is made out. The petitioners, if so advised can challenge the order/memo no. 985 dated 24.06.2020.

24. The MJC No. 662 of 2018 stands disposed of.

(Rajiv Roy, J)

Jagdish/Neha/-

AFR/NAFR	NAFR
CAV DATE	20.07.2023
Uploading Date	01.08.2023
Transmission Date	

