IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 435 of 2023
In
Civil Writ Jurisdiction Case No.2003 of 2004

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Surendra Prasad Tiwari S/o Ramdeo Tiwari R/o Opposite Sinha Store, Tahal Tola, PO-Dhanuat, PS-Rupaspur, Phulwari Gumti West, Patna.

... ... Appellant/s

Versus

1. The State of Bihar
2. The Additional Chief Secretary, Education Department, Government of Bihar, Patna. (Earlier Secretary-cum-Commissioner, Secondary, Primary and Adult Education, Government of Bihar).
3. The Additional Chief Secretary, General Administrative Department, Government of Bihar, Patna. (Earlier Commissioner-cum-Secretary, Personnel and Administrative Reforms, Government of Bihar).
4. The Deputy Secretary, Education Department, Government of Bihar, Patna. (Earlier Primary, Secondary and Adult Education, Government of Bihar).
5. The Director, Mass Education, Government of Bihar, Patna.
6. The Joint Director, Mass Education Directorate, Govt. of Bihar, Patna.
7. The Deputy Director, Mass Education, Directorate, Govt. of Bihar, Patna.
8. The Assistant Director, Mass Education, Directorate, Govt. of Bihar, Patna.
9. The District Mass Education Officer, Patna.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Rajnish Kumar, Advocate
Mr. Anish Kumar, Advocate
For the Respondent/s : Mr. Sarvesh Kumar Singh (AAG- 13)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date : 18-11-2026

The present appeal has been filed against the order dated 21.02.2023 passed by the Ld. Single Judge of this Court in CWJC No. 2003 of 2004, whereby and whereunder the writ

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petition has been dismissed.

2. The brief facts of the case, according to the appellant, are that the Adult Education Scheme was initially launched for spreading literacy among the illiterate adults and the appellant was appointed on temporary and *ad hoc* basis for three months as Accounts Clerk in the office of Adult Education Project Officer, Dehri, vide office order dated 29.06.1985, contents whereof is reproduced herein below:-

> *"श्री सुरेन्द्र प्रसाद तिवारी ग्राम–सुंदरिया पोस्ट–तमोढ़ी, जिला– भोजपुर को जो किसी सरकारी सेवा में नहीं है को वयस्क शिक्षा परियोजना पदाधिकारी कार्यालय डिहरी में लेखा लिपिक के पद पर वेतनमान 580 से 860 के वेतनमान मे पूर्णतः अस्थाई एवं तदर्थ रूप से तीन माह के लिए नियुक्ति किया जाता है।*
>
> *इस नियुक्ति का कोई नियमित दावा नहीं होगा।*
>
> *योगदान के समय इन्हे असैनिक शल्य चिकित्सा प्रमाण पत्र संलग्न होगा।*
>
> *(बी0डी0 शर्मा)*
>
> *जिला वयस्क शिक्षा पदाधिकारी, रोहतास।*
>
> *ज्ञापांक–227, दिनांक–29.06.85"*

3. The District Adult Education Officer, Rohtas at Sasaram had then vide letter dt. 16.10.1985 written to the Director, Adult Education-cum-Informal Education, recommending the name of the appellant and others, whose appointments could be approved. It is the case of the appellant that he had continued in the office of the District Adult Education Office, Rohtas till the month of August 1996. On 19.12.1995, the appellant is stated to

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have been transferred as Clerk-cum-Accountant at Bihta, however he was relieved in the month of August, 1996, whereafter he had joined at Bihta on 06.8.1996. On 22.05.2001, the appellant was transferred to State Resource Centre, Patna as Clerk-cum-Accountant. The appellant had worked at the State Resource Centre, Patna till 10.06.2002, however since the State Resource Centre was abolished from 10.06.2002, the appellant had stood relieved, whereupon the appellant had joined the Directorate of Mass Education on 11.06.2002, however the appellant was not given any posting and instead the District Mass Education Officer, Patna had issued a letter dt. 26.09.2001 terminating the services of all the persons with effect from 01.04.2001 on account of abolition of the non-formal scheme. It is the case of the appellant that the said order of termination was set aside by the Director, Mass Education and the appellant was paid salary till the month of August, 2001. Subsequently, the association of Class-III and IV employees of Adult and Non-formal Education had filed a writ application bearing CWJC No. 4716 of 1993 before the Hon'ble Patna High Court challenging the illegal termination of the employees of the Adult Education Department, which was allowed by a Division Bench of this Court vide order dt. 01.09.1993 and the order of termination

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was quashed as also a direction was issued to absorb/reinstate the writ petitioners and others in non-formal wing of Education Department in accordance with seniority, whereafter the order of termination was withdrawn. Nonetheless, as far as the appellant is concerned, neither the order of his posting was issued nor his termination order was withdrawn. Being aggrieved, the appellant herein had filed the connected writ petition bearing CWJC No. 2003 of 2004 *inter alia* praying therein to direct the respondents to nullify and quash the Memo dt. 26.09.2001 terminating the services of the appellant and further direct the respondents to pay the arrears of salary which has not been paid since the month of September, 2001.

4. The respondents had filed a counter affidavit in the aforesaid writ petition filed by the appellant, *inter alia* stating therein that the appellant was appointed on 29.06.1985 as Clerk cum Accountant on a temporary post on *ad hoc* basis in a temporary scheme pertaining to Adult Education, sponsored by the Government of India and in the appointment letter itself it was specifically mentioned that the services of the appellant is totally temporary and can be dispensed with without any notice or assigning any reason. Thereafter, since the Central Government's sponsored scheme pertaining to Adult Education

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came to a close in the year 1992, the services of the appellant was dispensed with, however in compliance of the order dated 01.09.1993 passed by a coordinate Bench of this Court in CWJC No. 4716 of 1993, the services of the appellant was absorbed in another centrally sponsored scheme called the non-formal education programme vide letter dt. 30.09.1993, however the same also came to be closed on 31.03.2001. Thus, the services of the appellant along with others were terminated with effect from 01.04.2001, inasmuch as the programme in which they were employed was finally closed.

5. It appears that during the interregnum period the Director, Mass Education, under the Human Resources Development Department, Government of Bihar, vide office order contained in letter dt. 10.02.2006 had absorbed the services of the appellant and others in the Welfare Department on the post of Clerk cum Accountant/Clerk cum Typist in the pay-scale of Rs. 4000-6000/-, however the said office order clearly stipulates that the absorption of the said employees shall be regarded as new appointment and no seniority or benefit would be admissible on the basis of the services rendered prior to being terminated but the service rendered prior to being terminated would be counted for the purposes of pension. The said order dated 10.02.2006

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was followed by yet another order dated 20.07.2006, issued by the Director, Social Welfare Department, ICDS Directorate, Government of Bihar, Patna, containing conditions of appointment, conditions no. *क)* and *ग)* being relevant are being reproduced herein below:-

> *"2. नियुक्ति की शर्तः*
>
> *क) मानव संसाधन विकास विभाग (प्राथमिक एवं वयस्क शिक्षा) के संकल्प संख्या 582 दिनांक 20.05.2005 के आलोक में इन छटनींग्रस्त कर्मचारियों का समायोजन नई नियुक्ति समझी जायेगी। छटनींग्रस्त होने के पूर्व की सेवा के आधार पर उन्हें वरीयता का लाभ अनुमान्य नहीं होगा परन्तु छटनींग्रस्त होने के पूर्व की सेवा की गणना पेन्शन के प्रयोजनार्थ की जायेगी।*
>
> *ग) सरकार का अनुमोदन प्राप्त कर इन छटनींग्रस्त कर्मियों की तदर्थ नियुक्ति आरक्षण रोस्टर की स्वीकृति के प्रत्याशा में इस शर्त के साथ की जा रही है कि आरक्षण रोस्टर के अनुरूप किसी कोटि विशेष में यदि कोई कर्मी अतिरेक होगा तो उनकी सेवा जन शिक्षा निदेशालय में वापस कर दी जायेगी। "*

6. The appellant had then filed an amendment petition for quashing the aforesaid letters dt. 10.02.2006 and 20.07.2006 as also for directing the respondents to compute the services of the appellant which he had rendered since 29.06.1985 for the purposes of fixing his seniority as also for promotional avenues.

7. The respondents had then filed a supplementary counter affidavit in reply to the aforesaid amendment petition filed by the appellant before the Writ Court, *inter alia* stating therein that all the retrenched employees of non-formal education programme have been absorbed in various departments/field

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offices against the vacant posts, however subject to certain conditions. It was also contended by the respondents that the Social Welfare Department, Govt. of Bihar, is operating its unit at the district level having its own cadre, entirely different from the Department from where the appellant was retrenched earlier, as such the services rendered by the appellant in other departments cannot be counted or added for the purposes of calculating his seniority in the Social Welfare Department.

8. The Ld. Single Judge by the impugned order dated 21.02.2023 has dismissed the writ petition on the ground that the claim of the appellant for counting his seniority with effect from the day when he was engaged in the schemes of the Central Government is wholly misconceived since he cannot be permitted to seek benefit of the period during which he was not born in the service/cadre and he shall be deemed to have born in the cadre only upon his appointment by way of absorption against the regular post by the government.

9. The Ld. Counsel for the appellant has submitted that the order of termination of the services of the appellant dated 26.09.2001 is violative of Article 311 of the Constitution of India and moreover his absorption in the ICDS Directorate on 20.07.2006 cannot be treated as a fresh appointment, hence the

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appellant is entitled to the benefits of the period of service already rendered by him in various Central Government schemes and accordingly his seniority is required to be fixed apart from the said period being also required to be counted for the purposes of promotional benefits.

10. *Per contra*, the Ld. Counsel for the respondents has submitted that the appellant was working in various Central Government's sponsored schemes which came to an end in the year 1992, hence the services of the appellant was dispensed with but in compliance of the order dt. 01.09.1993 passed in CWJC No. 4716 of 1993, the appellant was absorbed in another centrally sponsored scheme, i.e. the non-formal education scheme running in the State, vide letter dated 30.09.1993, however the same also came to be closed on 31.03.2001, thus the services of the appellant along with other similarly situated persons was finally terminated with effect from 01.04.2001, since the programme in which they were employed had stood closed with effect from 31.03.2001. Nonetheless, the services of the appellant was absorbed by way of compassion on account of a policy decision of the Government vide letter dt. 10.02.2006, however such absorption of the appellant was directed to be treated as a fresh appointment. It is further submitted that the

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appellant cannot seek benefit of the period during which he was not born in the service/cadre and since the appellant was born in the cadre only upon his appointment by way of absorption against the regular post, by the government, his claim for counting his seniority with effect from the date when he was engaged in the schemes of the Central Govt. is wholly misconceived, thus there is no infirmity in the impugned order dated 21.02.2023, hence the present appeal is fit to be dismissed.

11. We have heard the Ld. Counsel for the parties and perused the materials on record from which it is apparent that admittedly the appellant was appointed on temporary and *ad hoc* basis for three months as Accounts Clerk in the office of Adult Education Project Officer, Dehri, vide office order dated 29.06.1985, whereafter the tenure of his services was extended from time to time, however the said scheme came to be closed in the year 1992 leading to the services of the appellant being dispensed with but in compliance of the order dt. 01.09.1993 passed in CWJC No. 4716 of 1993, the appellant was absorbed in another centrally sponsored scheme, i.e. non-formal education scheme, vide letter dt. 30.09.1993, however the said scheme also came to an end with effect from 31.03.2001, hence the services of the appellant along with other similarly situated persons were

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finally terminated w.e.f. 01.4.2001, leading to the appellant filing the connected writ petition bearing CWJC No. 2003 of 2004.

12. At this juncture it may be pertinent to state that it is a well settled law that temporary appointment made for a scheme or project is co-terminus with the said scheme and persons so working have no right to be regularized in the regular service as also the employment terminates automatically upon the scheme coming to an end. It is equally a settled law that the fact that the scheme had been in operation for some decades or that the employee concerned has continued on *ad hoc* basis for one or two decades would not entitle the employee to seek permanency or regularization. In this regard, reference be had to a judgment rendered by the Hon'ble Apex Court in the case of ***Mohd. Abdul Kadir and Another vs. Director General of Police, Assam and Others***, reported in ***(2009) 6 SCC 611***, paragraphs no. 13 to 15 whereof are reproduced herein below:-

> *"13. The fact that the appellants were employed under the PIF Additional Scheme is not disputed. The duration of the PIF Additional Scheme under which they are employed was initially two years, to be reviewed for continuation along with the original PIF Scheme. The said Scheme is being extended from time to time and is being continued. If the temporary or ad hoc engagement or appointment is in connection with a particular project or a specific scheme, the ad hoc or temporary service of the persons employed under the project or scheme would*

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come to an end, on completion/closure/cessation of the project or the scheme.

14. The fact that the Scheme had been in operation for some decades or that the employee concerned has continued on ad hoc basis for one or two decades would not entitle the employee to seek permanency or regularisation. Even if any posts are sanctioned with reference to the Scheme, such sanction is of ad hoc or temporary posts coterminous with the Scheme and not of permanent posts.

15. On completion of the project or discontinuance of the scheme, those who were engaged with reference to or in connection with such project or scheme cannot claim any right to continue in service, nor seek regularisation in some other project or service.[See Bhagwan Dass v. State of Haryana [(1987) 4 SCC 634], Delhi Development Horticulture Employees' Union v. Delhi Admn. [(1992) 4 SCC 99], Hindustan Steel Works Construction Ltd. v. Employees' Union [(1995) 3 SCC 474], U.P. Land Development Corpn. v. Amar Singh [(2003) 5 SCC 388], Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra [(2005)5SCC122], State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1], Indian Council of Medical Research v. K. Rajyalakshmi [(2007) 2 SCC 332] and Lal Mohammad v. Indian Railway Construction Co. Ltd. [(2007) 2 SCC 513]. In view of this settled position, the appellants will not be entitled to regularisation."

13. Thus, we find from the records that the temporary/ ad hoc engagement/appointment of the appellant was in connection with the aforesaid centrally sponsored schemes, hence such ad hoc/ temporary service of the appellant as also that of the other similarly situated employees under a project or a scheme is bound to come to an end, on completion/closure/cessation of the

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project or the scheme. Even if the Scheme had been in operation for some decades or for that matter the employee concerned had continued on ad hoc basis for one or two decades, the same would not entitle such an employee to seek permanency or regularisation. It is a well settled law that on completion of the project or discontinuance of the scheme, those who were engaged with reference to or in connection with such project or scheme cannot claim any right to continue in service, nor seek regularisation in some other project or service.

14. Now coming back to the present case, we find that since the aforesaid Central Government's scheme had come to an end, the services of the appellant herein along with others had stood terminated with effect from 01.04.2001. Thus, no infirmity can be found with the order of termination dt. 01.4.2001/ 26.9.2001. Nonetheless, the respondents had, by way of compassion and good gesture, absorbed the services of the appellant along with others vide office order dated 10.02.2006 issued by the Director, Mass Education, Human Resources Development Department, on the post of Clerk cum Accountant/Clerk cum Typist in the pay-scale of Rs. 4000-6000/-, however subject to the condition that the absorption of the said employees shall be regarded as new appointment and no seniority or benefit would be

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admissible on the basis of the services rendered prior to being terminated but the service rendered prior to being terminated would be counted for the purposes of pension. The said order dated 10.02.2006 was followed by yet another order dated 20.07.2006, issued by the Director, Social Welfare Department, ICDS Directorate, Government of Bihar, Patna, containing conditions of appointment, relevant portion whereof has already been reproduced herein above in the preceding paragraph.

15. The appellant now seeks that the services rendered by him in the aforesaid centrally sponsored schemes be taken into consideration for the purposes of fixing his seniority as also for promotional avenues. In this regard, it would suffice to state that the appellant was absorbed in the services of the respondents i.e. in the regular establishment of the Welfare Department vide order dt. 10.02.2006, wherein one of the condition is that the said absorption will be regarded as a new appointment and the benefit of seniority on the basis of service rendered in the past would not be granted, however the said period shall be considered for computing pensionary benefits. We are of the view that the appellant was born in the service/cadre in the year 2006 itself and prior to that he was working in various Central Government sponsored schemes on a purely temporary and *ad*

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hoc basis, hence he will be deemed to have born in the cadre only upon his appointment by way of absorption against the regular post, by the Government i.e. upon coming into regular employment and entering into the service of the Government, thus there is no question of counting his seniority with effect from the date of his engagement in the scheme of the Central Government, especially in view of the fact that the same would cause discrimination as far as the existing employees, who had entered the service/cadre concerned much earlier to the appellant, are concerned. In this regard, reference be had to a judgment rendered by the Hon'ble Apex Court in the case of ***State of Bihar & others vs. Baliram Singh and others***, reported in ***(2018)18 SCC 46***.

16. We may also refer to yet another judgment rendered by the Hon'ble Apex Court in the case of ***Parmeshwar Nanda and others vs. State of Jharkhand and others***, reported in ***(2020)12 SCC 131***, wherein in somewhat similar circumstances, it has been held that since the appellants of the said case were absorbed as fresh appointees without pay protection and seniority, as a consequence thereof, they will not be entitled to count their past service rendered under the Project for the purpose of pension. It would be apropos to reproduce para nos.

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1, 15, 16, 17, 18, 21, 23, 24, 25 and 26 of the judgment rendered in the case of ***Parmeshwar Nanda and others*** herein below:-

> *"1. The present appeals are directed against an order passed by the Full Bench of the High Court of Jharkhand on 16-6-2017 [Bholanath Hansda v. State of Jharkhand, 2017 SCC OnLine Jhar 1387] wherein it has been held that the services rendered by the appellants under the Adult Education and Non-Formal Education Project (for short, "the Project") cannot be counted under a Government scheme for the purpose of pensionary benefits after the appellants were appointed by the State.*
>
> *15. In the order under appeal, the claim of the employees for pension was declined for the reason that no declaration within the meaning of Rule 59(1) in general terms has been made nor any direction in individual cases issued in their favour. The High Court relied upon judgment of this Court reported as Dhyan Singh v. State of Haryana [(2002) 10 SCC 656]. The High Court also held that the judgment of the Single Bench of the Patna High Court in Baliram Singh v. State of Bihar [2016 SCC OnLine Pat 9958] is per incuriam. The High Court concluded as under: (Bholanath Hansda case [2017 SCC OnLine Jhar 1387])*
>
> > *"54. The foregoing discussion therefore makes it clear that past services of these petitioners/employees were under the centrally sponsored scheme known as Adult Education/Non-formal Education/Mass Education Project which was abolished w.e.f. 1-4-2001 by the Central Government and consequently w.e.f. 15-5-2001 by the Government of Jharkhand. Appointment of these petitioners/employees under such a scheme/project therefore, cannot be treated as under regular establishment of the Government on a permanent and substantive post. Moreover, their pay and allowances were borne by the grant-in-aid released by the Central Government from time to time. That is the reason why*

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their services were treated as surplus once the Central Government closed the scheme w.e.f. 1-4-2001. Petitioners have failed to controvert the aforesaid position on facts."

16. The judgment in Baliram Singh v. State of Bihar [2016 SCC OnLine Pat 9958], has attained finality with the judgment of this Court reported as State of Bihar v. Baliram Singh [(2018) 18 SCC 46]. In the aforesaid case, the policy decision of absorbing the writ petitioners appointed under the Project contained a clause that the candidates will be treated as fresh appointments and that the earlier services rendered by them shall be calculated for their pension. The writ petitioners before the Patna High Court claimed back wages from the date of their termination till the date they were absorbed. This Court declined the claim of back wages. The Court held as under: (Baliram Singh case)

"18. In the present case, however, the respondents have neither challenged the termination order after closure of the Non-Formal Education Scheme with effect from 1-4-2001 nor the policy dated 20-5-2005 under which they have been appointed or the appointment letter dated 16-3-2007. Even the appointment letter dated 16-3-2007 unambiguously predicates that the appointment was a fresh appointment and the past services would be reckoned only for the purpose of grant of pension and nothing more. Indisputably, the respondents acted upon such terms and conditions of appointment without any demurrer. They chose to file the subject writ petition only in the year 2013, when the cause of action first arose on 1-4-2001, then on 20-5-2005 and once again, on 16.3.2007. Unless the respondents are to be reinstated in their previous post (held prior to 1-4-2001), the question of awarding back wages would not arise at all. The relief of back wages is and can be linked only to the order of reinstatement. It cannot be awarded in isolation or, for that matter, during the period when the respondents were not in

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employment at all."

17. The case of Dhyan Singh [(2002) 10 SCC 656] was in respect of appointments under the Project in the State of Haryana. The services of the employees were discharged upon abolishing of the aforementioned Project. The employees invoked the writ jurisdiction of the court claiming fixation of their salary by taking past service and for pension. This Court declined such claim and held as under:

> *"1. ... The continuance/engagement of the appellants under the specific scheme cannot be held to be an employment under any establishment of the Govt.. Such schemes are taken up for certain contingencies when money for the same is provided either by the Central Government or at times by some foreign countries. But the employment under such scheme not being a part of the formal cadre of the State Government, it is difficult to hold that the period for which an employee rendered service under such scheme can be counted either for the purposes of deciding their pensionary benefits or even for fixing of their salary in the scale of pay once they are regularly absorbed."*

18. In the present case, Clause 11 of the notification dated 30-5-2007 issued by the Government of Jharkhand is to the effect that absorption of the surplus personnel will be considered as new appointments and they will not be granted benefit of seniority on the basis of their past service. Neither will such past service entitle them to such pay protection. One of the appointment letters appointing 65 candidates as Project Officers was issued on 20-12-2007. Such appointment letter had following clauses which read as under:

> *"4. Adjusted employees shall be covered under the old Pension Scheme. Their service period prior to retrenchment shall be counted for the purpose of pension. Period of retrenchment shall not be counted*

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for the purpose of pension.

5. Adjustment of above surplus Project Officers shall be considered as fresh appointment and benefit of seniority on the basis their service rendered prior to becoming surplus shall not be admissible to them."

The appointment letters to the other employees is on similar lines.

21. The appellants were appointed under a specific scheme i.e. the Project. Such project was not a permanent establishment of the Government as it was meant for a specific purpose funded by the Central Government for a specified period. The appointment of the appellants under the Project is not a part of any cadre of the State Government. Therefore, the first condition of Rule 58 that the service rendered must be under the State Government is not satisfied by the appellants having been appointed under the Project. The second condition that employment must be substantive and permanent is again not satisfied by the appellants as the employment of the appellants was under the Project. A permanent post in terms of Rule 31 of the Rules means a post carrying a definite rate of pay and that is sanctioned without a time-limit. The appointment of the appellants under the project was not in a pay scale nor was it sanctioned without a time-limit. Further, substantive pay is defined in Rule 38 of the Rules as a person who is appointed in a cadre. At best, the appellants satisfied only the third condition i.e. that they were paid by the Government.

23. The case of Baliram Singh [2016 SCC OnLine Pat 9958] arises out of the policy of the State of Bihar wherein the past service has been specifically ordered to be considered for pension. Since in the State of Jharkhand, the policy decision is to treat them as fresh appointments without any benefit of seniority and pay protection, therefore, to count the period when the appellants were working under a Project as pensionable service is beyond comprehension. The appellants have

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been appointed as fresh candidates and, therefore, their period of service for pension has to be calculated from the date of their regular appointment and therefore they cannot get any benefit of past service rendered by them.

24. The learned counsel for the appellants have referred to an order passed by this Court in State of Jharkhand v. Asgar Ali [(2018) 18 SCC 64] wherein the direction [Asgar Ali v. State of Jharkhand, 2010 SCC OnLine Jhar 8] of the High Court for payment of arrears was not interfered with. It is contended that since the appellants have been paid salary for the period prior to their regular appointment, the appellants would be entitled to pension as well.

25. The Single Bench of the Jharkhand High Court in a judgment reported as Asgar Ali v. State of Jharkhand [2010 SCC OnLine Jhar 8], dealt with a prayer for absorption and for payment of arrears of salary from 16-5-2001 i.e. when the employees were rendered as surplus, till January 2008 i.e. the date of their absorption, in Writ Petition No. 729 of 2004. The learned Single Bench vide order dated 4-1-2010 [Asgar Ali v. State of Jharkhand, 2010 SCC OnLine Jhar 8], directed the State for the payment of salary for the reason that the services of the employees under the Project were not retrenched, therefore, the employees were entitled to their salary. In such petition the employees had made no claim for counting of past services for the purposes of pensionary benefits. As against such order of the learned Single Judge, the State sought LPA No. 533 of 2012 which was dismissed vide order dated 1-10-2013 [State of Jharkhand v. Asgar Ali, LPA No. 533 of 2012, order dated 1-10-2013 (Jhar)]. Thereafter the State sought a special leave petition which was also dismissed [State of Jharkhand v. Asgar Ali, (2018) 18 SCC 64] with a direction to make phased payments of salary to the writ petitioners/employees. Again, no claim for counting of past services for the purposes of pension was made or allowed by the Court. It was merely a monetary benefit

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which was granted on account of no formal order of retrenchment being passed against the employees employed under the Project.

26. Since the appellants were absorbed as fresh appointees without pay protection and seniority, as a consequence thereof, they will not be entitled to count their past service rendered under the Project for the purpose of pension. We, thus, do not find any error in the order [Bholanath Hansda v. State of Jharkhand, 2017 SCC OnLine Jhar 1387] passed by the High Court which may warrant interference in the present appeals. Accordingly, the appeals are dismissed."

17. In ***Dhyan Singh and Others vs. State of Haryana & Others***, reported in ***(2002)10 SCC 656***, the Hon'ble Apex Court has categorically held that service rendered under a scheme financed by the Central Government or a foreign country cannot be considered as an appointment in an establishment of the State Government, hence service so rendered cannot count for pay fixation and pensionary benefits when the incumbents are subsequently appointed by way of concession to them as fresh recruits to posts born in the cadre of the State Government.

18. In yet another judgment rendered by the Hon'ble Apex Court in the case of ***Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi & Ors.***, reported in ***(1992)4 SCC 99***, it has been held that workers employed under a scheme have no right to claim regularization of their services. It would be apposite to reproduce paragraphs no. 17, 22 and 24 of

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the said judgment herein below:-

> *"17. The situation that emerges out of the facts which we have narrated above, however, is that the Delhi Administration had at no stage engaged any of the present petitioners for its work. It is the DRDA which as an implementing machinery of the Jawahar Rozgar Yojna had given to the present petitioners work on daily wage basis under the said Yojna. The Yojna has not and cannot have by its very nature any sanctioned strength of posts or workers. Even when the DRDA was implementing the said Yojna they were being funded by the Central Government directly for the purpose of giving employment under the said Yojna. They had to decide the rural works which they would undertake in the next month and for that purpose to estimate in the last week of the preceding month the number of workers required for the same. The works by their very nature had to be undertaken on daily wage basis and as soon as the works at particular sites were over, the workers were required to be shifted to other sites. The workers were engaged from the areas concerned and those like the petitioners who were willing to go to the sites where the work was available, were also given the employment under the scheme. Even that responsibility of the implementation of the Yojna was transferred by the Central Government from the DRDA to the panchayats directly who, as stated above, were the only agencies which could choose the works to be carried out as well as the work force to be employed for the works. The finance was also directly given to the panchayats for the purpose. The only task that was entrusted to the DRDA was to monitor the working of the scheme by the panchayats. In the circumstances, by the very nature of things neither the DRDA nor the panchayats could be asked either to ensure work to the petitioners everyday or to regularise them. There was no scope for regularisation since there were no sanctioned posts or the sanctioned strength of workers.*

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22. The above figures show that if the resources used for the Jawahar Rozgar Yojna were in their entirety to be used for providing full employment throughout the year, they would have given employment only to a small percentage of the population in need of income, the remaining vast majority being left with no income whatsoever. No fault could, therefore, be found with the limited object of the scheme given the limited resources at the disposal of the State. Those employed under the scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularisation, is to frustrate the scheme itself. No court can be a party to such exercise. It is wrong to approach the problems of those employed under such schemes with a view to providing them with full employment and guaranteeing equal pay for equal work. These concepts, in the context of such schemes are both unwarranted and misplaced. They will do more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would benefit a few at the cost of the many starving poor for whom the schemes are meant. That would also force the State to wind up the existing schemes and forbid them from introducing the new ones, for want of resources. This is not to say that the problems of the unemployed deserve no consideration or sympathy. This is only to emphasise that even among the unemployed a distinction exists between those who live below and above the poverty line, those in need of partial and those in need of full employment, the educated and uneducated, the rural and urban unemployed etc.

24. In the circumstances, it is not possible to accede to the request of the petitioners that the respondents be directed to regularise them. The most that can be done for them is to direct the respondent-Delhi Administration to keep them on a panel and if they are registered with the Employment Exchange and are qualified to be appointed

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on the relevant posts, give them a preference in employment whenever there occurs a vacancy in the regular posts, which direction we give hereby."

19. It would be apropos to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Surendra Kumar Sharma vs. Vikas Adhikari & Another***, reported in ***(2003)5 SCC 12***, paragraphs no. 5 to 9 whereof are reproduced herein below:-

"5. A matter as to termination of employment caused by abolition of posts consequent upon the schemes having been abolished for non-availability of funds came up for the consideration of this Court in Rajendra v. State of Rajasthan [(1999) 2 SCC 317]. It was held that when posts temporarily created for fulfilling the needs of a particular project or scheme limited in its duration come to an end because the need for the project comes to an end either because the need was fulfilled or the project had to be abandoned wholly or partially for want of funds, the employer cannot by a writ of mandamus be directed to continue employing such employees as have been dislodged, because such a direction would amount to requisition for creation of posts though not required by the employer and funding such posts though the employer did not have funds available for the purpose.

6. In *Jaipal* v. *State of Haryana* [(1988) 3 SCC 354] the employees of the project of adult and non-formal education, a *temporary* project which was time-bound to last till 1990, were held not entitled to regularizing of their services.

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7. *There is yet another reason why the appellant cannot be allowed any relief. The appellant had initiated proceedings against Vikas Adhikari Panchayat Samiti alleging himself to be in the employment of the Panchayat Samiti. What the High Court has found, upon scrutiny of several documents produced for its consideration and the evidence adduced before the Labour Court, is that the appellant was not in the employment of the Panchayat Samiti at all. What was done was that a panel was prepared by the Collector of the district enrolling the unemployed and out of that panel the appellant was taken for work on daily wages for the purpose of the Scheme.*

8. *The appellant was a daily-wager in a scheme and knew it well that his employment was coterminous with the Scheme. The post against which the appellant worked has been abolished for want of funds and has ceased to exist. As held above, the Panchayat Samiti was not even an employer of the appellant.*

9. The learned Single Judge rightly set aside the award of the Labour Court. The Division Bench has not erred in upholding the decision of the learned Single Judge. The appeal is devoid of any merit and liable to be dismissed. It is dismissed accordingly though without any order as to the costs."

20. The foregoing discussion, therefore makes it clear that past services of the appellant herein was under the centrally sponsored schemes known as Adult Education Scheme/Non-formal Education scheme/Mass Education Project, last of which

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was abolished with effect from 01.04.2001 by the Central Govt., leading to termination of the services of the appellant with effect from 01.04.2001, thus appointment of the appellant under such a scheme/project cannot be treated to be one under the regular establishment of the Government on a permanent and substantive post. Moreover, the pay and allowances of the appellant was borne by the grant-in-aid released by the Central Government from time to time and this is why the services of the appellant and others were treated as surplus once the Central Government closed the scheme with effect from 01.04.2001.

21. Consequently, we find that the principle of law laid down by the Hon'ble Apex Court in the case of ***Dhyan Singh*** (supra) and ***Parmeshwar Nanda and others*** (supra) squarely covers the case of the appellant. The appellant admittedly came into the regular establishment on substantive and permanent post under the State Government only after absorption vide office order dated 10.02.2006/20.07.2006 and the said orders categorically mention that the absorption of the appellant and others shall be considered as new appointment and no seniority or benefit would be admissible on the basis of the services rendered prior to being terminated but the service rendered prior to being terminated would be counted for the purposes of pension.

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22. Having regard to the facts and circumstances of the case, considering the judgments rendered by the Hon'ble Apex Court in a catena of cases, as detailed hereinabove in the preceding paragraphs and for the foregoing reasons, we find that no part of the service rendered by the appellant under the centrally sponsored government's scheme, as aforesaid, can be counted either for fixation of salary or for fixing seniority for promotion much less for deciding the pensionary benefits inasmuch as the continuance/engagement of the appellant under the aforesaid Central Government Schemes cannot be held to be an employment under any establishment of the government since such employment under such schemes are not part of the formal cadre of the State Government, nonetheless, the respondents have been generous enough to at least grant the benefit of the services rendered by the appellant and others prior to being terminated for the purposes of computing pension, hence we do not find an infirmity either in the aforesaid orders dated 10.02.2006, issued by the Director, Mass Education, under the Human Resources Development Department, Government of Bihar and the one dated 20.07.2006, issued by the Director, Social Welfare Department, ICDS Directorate, Government of Bihar, Patna or in the impugned order dated 21.02.2023 passed

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by the Ld. Single Judge in CWJC No. 2003 of 2004, hence the present appeal stands dismissed.

(Mohit Kumar Shah, J)

(Sourendra Pandey, J)

S.Sb/-

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