

(2012) 12 PAT CK 0056
In the Patna High Court
Case No : CWJC No. 18473 of 2012

Abhay Nath Jha and Another	Vs	APPELLANT
Bihar School Examination Board and Others		RESPONDENT

Date of Decision : 19-12-2012

Acts Referred:

Bihar Intermediate Education Council (Repeal) Act, 2007 — Section 2, 3

Citation : (2013) 2 PLJR 345

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Chitranjan Sinha and Binodanand Mishra, for the Appellant; Ajay Bihari Sinha for the State, Lalit Kishore and Piyush Lall for the B.S.E.B., for the Respondent

Judgement

S.N. Hussain, J.—This writ petition has been filed by the petitioners for the following relief"s:--

- (i) For issuance of an order, direction or writ including writ in the nature of certiorari quashing the office order contained in Memo No. 854 dated 12.9.2012 so far it relates to the petitioners whereby the petitioners have been reverted to the post of Assistant and Routine Clerk, respectively from the post of Section Officer held by them for the last more than two decades.
- (ii) For issuance of an order, direction or writ including writ in the nature of mandamus commanding the respondents not to give effect to the office order dated 12.9.2012 so far it relates to the petitioners.
- (iii) For issuance of an order, direction or writ including writ in the nature of mandamus commanding the respondents to adjust/absorb the services of the petitioners on the post of Section Officer in the Bihar School Examination Board, Patna.
- (iv) For issuance of an appropriate declaration holding that the reversion/demotion of the petitioners to the post of Assistants & Routine Clerk respectively

is illegal, arbitrary and unsustainable in the eye of law.

(v) For issuance of an order, direction or writ including writ in the nature of mandamus, directing the respondents not to disturb the petitioners and to permit them to work on the post of Section Officer to which they have been duly promoted by the Bihar Intermediate Education Council (since abolished).

(vi) For issuance of an appropriate direction holding that the petitioners are entitled to be absorbed/adjusted in the Bihar School Examination Board to the post of Section Officers.

(vii) For any other relief(s) to which the petitioners may be found entitled in the facts and jurisdiction of the case.

The Bihar Intermediate Education council (hereinafter referred to as "the Council" for the sake of brevity) was established initially vide Bihar Ordinance No. 86 of 1980 and subsequently by an Act of the Legislature, namely, the Bihar Intermediate Education Council Act, 1992 (hereinafter referred to as "the Act" for the sake of brevity) for separating Intermediate Education from the Universities of Bihar and for bringing uniformity in the Intermediate Education.

2. However, for filling up the posts of Assistants in the Council, advertisement no. 4 of 1982 (Annexure-1) was made inviting applications in two pay scales, namely, scale of Rs. 284-372/- for candidates having passed Secondary School Examination or any equivalent examination and scale of Rs. 348-570/- for candidates having passed Intermediate Examination or any other equivalent examination, but the candidates having higher qualification were to be given weightage.

3. Learned counsel for the petitioners submitted that they were Intermediates and hence they applied for appointment on the posts of Assistants in the pay scale of Rs. 348-570/-, whereafter respondent-Deputy Secretary sent them the format on 8.9.1982 and the petitioners filled the prescribed format giving requisite information and sent it to the Council, whereafter vide letters dated 21.1.1983 (Annexures-3 series), issued by the Deputy Secretary of the Council, the petitioners were appointed on daily wages on the aforesaid posts of Clerks. Thereafter, the petitioners joined the Council and continued working as such continuously.

4. Learned counsel for the petitioners stated that vide Ordinance No. 8 of 1985 promulgated on 20.5.1985, the Council was superseded and all the assets and liabilities of the Council vested in the State Government. Subsequently, the Council was again made functional vide Bihar Ordinance of 1989. However, in the meantime the State Government took a decision to appoint the petitioners and others on sanctioned posts of Assistants in the pay scale of Rs. 284-372/- with effect from 1.6.1985 and, accordingly, office order dated 21.2.1986 (Annexure-4) was issued to that effect by the Secretary, Department of Education, Government of Bihar. In the said office order, it was stated that those,

holding the qualification of Matriculation, would be treated as Routine Clerks.

5. Learned counsel for the petitioners averred that the Council granted Sr. Selection Grade in the rank of Assistants to the petitioners with effect from 1.6.1990 vide office order dated 5.10.1991 (Annexure-5). Thereafter, vide office order dated 4.7.1994 the petitioners were granted promotion with effect from 2.6.1992 on the sanctioned posts of Section Officer, which were created by the Council and had already been approved by the State Government, whereafter the petitioners joined the posts of Section Officer and discharged their duties uninterruptedly to the satisfaction of all concerned for the last two decades.

6. Learned counsel for the petitioners claimed that much subsequently vide the Bihar Intermediate Education Council (Repeal) Act, 2007 (Bihar Act 17 of 2007), the Bihar Intermediate Education Council Act, 1992 was repealed and the Council was abolished and the functions of the Council were directed to be discharged by the Bihar School Examination Board (hereinafter referred to as "the Board" for the sake of brevity). Section 3 of Repeal Act provided for adjustment of employees of the Council prescribing that from the date of repeal, all the employees of the Council shall remain in employment, as if the Act had not been repealed and they would continue to be paid same salary and allowances as were applicable on the date of the repeal of the Act till such time the State Government took a final decision after constituting a Committee of Secretaries for preparing a detailed scheme of absorption, retirement, compulsory retirement or voluntary retirement, screening appointment and other service conditions of the employees of the Council, whereafter the State Government was to consider, modify, amend or suggest modifications or amendments in the said Scheme and finally approve, enforce and make it operational as a statutory scheme framed under the Act.

7. Learned counsel for the petitioners asserted that after coming into force of the Repeal Act, the State Government, vide notification dated 2.7.2007, constituted a Three Member Committee, which submitted its action plan to the Government on 9.4.2010 and finally Gazette notification dated 12.7.2012 (Annexure-7) was published with respect to the decision of the Government in the case of officers and employees of the Council.

8. Learned counsel for the petitioners also stated that in view of the aforesaid notification, the Bihar School Examination Board (hereinafter referred to as "the Board" for the sake of brevity) constituted a Five Member Committee vide memo dated 17.7.2012 to identify the employees of the Council, who were working on the date of its abolition i.e. 19.4.2007 and who were fit to be absorbed in accordance with the resolution of the State Government dated 12.7.2012. In response to the said direction of the Board, the Committee considered the matter and submitted its report to the Board on 19.8.2012, the concerned extracts of which with respect to the two petitioners are annexed as Annexures-8 and 9 to the writ petition.

9. Learned counsel for the petitioners further submitted that notice dated 24.8.2012 (Annexure-11) was issued in the newspaper stating that the provisional list of absorption submitted by the Absorption Committee on 19.8.2012 has been published on the website and objections were invited from the concerned persons. The said provisional list dated 19.8.2012 not being in accordance with the resolution of the State Government dated 12.7.2012, the petitioners filed their objection on 25.8.2012 (Annexure-12) clearly stating that for the appointment advertisements were duly issued, reservation rules were followed and the petitioners were holding the requisite qualifications for appointment and they had been appointed against the sanctioned and vacant posts and hence they were entitled to be adjusted/absorbed on the posts of Section Officer in the Board, which they were holding for the last two decades.

10. The grievance of the petitioners is that without considering the objections filed by the petitioners and contrary to the direction issued by the State Government in its resolution dated 12.7.2012, the Board issued the impugned office orders dated 12.9.2012 (Annexures-13 & 13/1) adjusting the services of petitioner no. 1 on the post of Assistant and the services of petitioner no. 2 on the post of Routine Clerk in the Board merely on the basis of the report of the Committee, which was proved to be illegal by the petitioners in their objections.

11. Learned counsel for the petitioners argued that no reason at all was given by the authorities concerned for passing the impugned order, which appears to be only on the basis of frivolous assumptions that the petitioners lacked qualification and experience for the concerned posts, but both the assumptions were absolutely frivolous and misconceived and the same have come after 29 years of the petitioners' services and after 20 years of their working as Section Officers.

12. On the other hand, learned counsel for the respondents vehemently opposed the contentions of learned counsel for the petitioners and stated that the post of Clerk is different from the post of Assistant in the Central Government and out of them the post of Clerk was bifurcated as Lower Division Clerk (for short "LDC") and Upper Division Clerk (for short "UDC"), whereas, the post of Assistant was divided as Lower Division Assistant (for short "LDA") and Upper Division Assistant (for short "UDA"). But in the year 2000, the posts of LDA and UDA were merged in the post of Assistant with effect from 1977 vide Finance Department's letter no. 3734 dated 7.4.1977.

13. Learned counsel for the respondents submitted that vide circular no. 8826 dated 20.12.2000 the Government bifurcated the posts of Clerk and Assistant, out of which the post of Assistant was promotional post of UDC, which was, in turn, promotional post of LDC with effect from 1.1.1996. Till date the same set up of LDC, UDC and Assistant is continuing with separate scales. In this regard, learned counsel for the respondents relied upon a decision of a Bench of this Court in case of *The State of Bihar and Others Vs. Sanjeev Kumar and Others* .

14. Learned counsel for the respondents averred that, admittedly, the petitioners

were initially appointed on daily wages vide orders dated 21.1.1983 (Annexures-3 series), but subsequently they were appointed afresh on the posts of Assistant for one year probation vide orders dated 21.2.1986 (Annexures-4 series) and they were granted senior selection grade vide order dated 5.10.1991 (Annexure-5) and were also promoted to the posts of Section Officer with effect from 2.6.1992 vide office order of the Council dated 4.7.1994 (Annexure-6).

15. Learned counsel for the respondents asserted that in the year 2007 while the petitioners were working as Section Officers in the Council, the Act of 1992 was repealed vide Repeal Act of 2007 and the existence of the Intermediate Council ceased with effect thereto. Section 3 of the Repeal Act of 2007 provided for conditions of employees, for which a Committee was to be constituted to prepare Scheme, which, after approval of the State Government, would attain statutory effect. This provision did not show that the employees of the Council would be taken or absorbed in the Board on the same post even if they did not fulfil the required criteria and if such absorption is made, it would be a fresh appointment, for which their education and experience have to be seen as per the requirement.

16. Apart from the aforesaid provision of the Repeal Act, learned counsel for the respondents also referred to paragraph 2 of the Scheme formulated by the Committee, which was issued vide resolution dated 12.7.2012, published in the Bihar Gazette (extraordinary). It was specifically provided in the Scheme that only if the criteria fixed were fulfilled by an employee, he could be appointed on a comparable post. The said Committee relying upon the decision of the Apex Court in case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , pointed out in Clause 2(x) that such employee would be considered in the service of the Board from the date of his absorption and would be entitled to the emoluments available to the employees of the Board. Clauses 3(i) and (iii) of the said report of the Committee provided that the employees appointed strictly according to the provisions of law would be given preference to irregular appointees and if an employee of the Council is found eligible, he would be absorbed on the equivalent post with equal pay scale and if such equivalent post is not available then to the immediate lower scale post.

17. Learned counsel for the respondents claimed that after framing of the aforesaid Scheme, the Board appointed a Screening Committee on 17.7.2012 (Annexure-"A") for examining the cases of different categories of employees of the erstwhile Council for absorption in the Board. The Committee submitted its report on 19.8.2012 stating that 70 posts of Section Officer were sanctioned in the Council, but no sanctioned and vacant post of Section Officer was vacant in the Board. It was also held by the Committee in its aforesaid report that none of the petitioners fulfilled the criteria fixed in Clause 3(I) of the Scheme (Annexure-7) and hence they were not fit for being posted on any post as per Clause 2(II) of the Scheme (Annexure-7), but the Committee took a lenient view and appointed the petitioners as per Clause 2(II) of the aforesaid Scheme.

18. Learned counsel for the respondents claimed that in the advertisement of 1982 (Annexure-1), the Council had provided two pay scales; firstly for matriculates with three years' experience and secondly for intermediates with five years' experience, which were mandatorily required. Although the said advertisement was for the post of Clerk and not for the post of Assistant, but the petitioners were appointed on daily wages for two months only and there is no documentary proof that the petitioners continued on daily wages till 1986. But the petitioners were subsequently appointed on the posts of Intermediate Assistant without having any five years of experience as daily wages experience cannot be taken as experience required for Clerks. Hence, the petitioners did not fulfil the mandatory criteria of experience.

19. Learned counsel for the respondents stated that although the qualification for the post concerned as required at the time of advertisement in 1982 was Intermediate, which the petitioners had already acquired, but vide resolution dated 2.1.1985 (Annexure-"E"), the State Government had decided to enhance the required qualification of Assistants to Bachelor and the petitioners were appointed on the posts of Assistant much thereafter on 29.2.1986, which is not disputed by the petitioners. Hence the petitioners' qualifications for Assistants at the relevant time i.e. in 1986 were not proper.

20. Learned counsel for the respondents averred that since the petitioners' appointment in 1986 was without following the prescribed procedure and they did not fulfil the criteria fixed, they were not fit to be absorbed in the service of the Board, but the authorities took a lenient view and adjusted the petitioners on the posts of Assistant and L.D.C., respectively. Learned counsel for the respondents claimed that even Clause 5.1 of resolution no. 2215 dated 11.2.1985 issued by the Personnel and Administrative Reforms Department, Government of Bihar was not followed and hence the Screening Committee was quite justified in examining the petitioners' case in view of the decision of the Apex Court in case of Uma Devi (supra) after considering all the relevant points raised. When the petitioners did not have even the basic qualification for the post concerned, they cannot be appointed on the posts claimed by them, specially when it is their fresh appointment in the Board. Hence, they cannot now claim their adjustment on the same posts.

21. Learned counsel for the respondents also submitted that the Screening Committee provided a list of 379 officers/employees for absorption in the Board though only 207 posts were vacant in the Board and hence keeping in view the work load of the Board, letter dated 28.7.2012 (Annexure-"B") was sent by the Board to the Director, Secondary Education, Education Department, Government of Bihar requesting to grant permission for creation of posts under Rule 9(1) of Chapter-2 of Bihar School Examination Board Rules, 1963. Subsequently in its meeting dated 31.8.2012 (Annexure-"C"), the Board approved the report submitted by the Screening Committee and also confirmed the request for creation of posts in the Education Department, whereafter the Education

Department granted approval to the aforesaid request of the Board vide letter dated 12.9.2012 (Annexure-"D") and on the same date i.e. 12.9.2012 (Annexures-13 series) office orders were issued for appointments of petitioners no. 1 and 2 to the posts of Assistant and L.D.C., respectively, whereafter they submitted their joining in the Board on 12.9.2012 (Annexures-F series) conditionally without prejudice to their rights, which are in issue before this Court in the instant writ petition.

22. Learned counsel for the respondents, thus, argued that the entire claim of the petitioners is absolutely frivolous and misconceived as they have no right to the posts which they are claiming. Furthermore, since all the higher posts having already been filled up, the claim of the petitioners can only be granted only after removing persons working in the scale above the petitioners, but no such persons have been impleaded in the instant writ petition by the petitioners. Hence on this score alone, this writ petition is fit to be dismissed.

23. Considering the averments made by learned counsel for the parties and the materials on record, it transpires to be undisputed that vide advertisement no. 4 of 1982 was issued by the Council inviting applications from candidates seeking posts of Assistants in the pay scale of Rs. 248-570/- and for them the minimum qualification fixed was Intermediate with five years' experience. However, the petitioners applied in the prescribed format but they were not appointed on the regular posts of Clerks, rather they were appointed merely as daily wage clerks vide order of the Council dated 21.1.1983 and since then the petitioners continued working in the Council regularly.

24. It is also not in dispute that vide Ordinance No. 8 of 1985, promulgated on 20.5.1985, the Council was superseded and its assets, liabilities and functions vested in the State Government and immediately thereafter the State Government took a decision to appoint the petitioners and other similarly situated persons on the sanctioned posts of Assistants in the scale of Rs. 284-372/- with effect from 1.6.1985 vide order dated 21.2.1986. This step of the State Government appears to be a policy decision taken by the authorities concerned and there is no occasion for either this Court or any one else to differ with the said policy decision of the State Government, specially when the Council was made functional vide Bihar Ordinance of 1989 and it granted senior selection grade in the rank of Assistants to the petitioners with effect from 1.6.1990 vide office order dated 5.10.1991.

25. Thereafter, promotions were also granted to the petitioners with effect from 2.6.1992 vide office order dated 4.7.1994 on the sanctioned posts of Section Officers, which were created by the Council and had already been approved by the State Government and on which posts the petitioners continued functioning in the Council till the Council was abolished in the year 2007 as the Act of 1992 was repealed by the Bihar Intermediate Education Council (Repeal) Act, 2007. All the aforesaid steps were taken and orders were passed by the competent authorities and hence in the said circumstances neither the authorities of the

Board nor the authorities of the State Government nor any one else can legally and justifiably raise any objection to the petitioners' appointments, promotions and working in the Council till it was abolished in the year 2007.

26. So far the position of the petitioners in the Board after abolition of the Council by Repeal Act of 2007 is concerned, Section 2 of the Bihar Intermediate Education Council (Repeal) Act, 2007 specifically provided that the Act of 1992 was repealed, whereas, Section 3 thereof provided for adjustment of the employees of the Council in the Board. The said provision reads as follows:--

3. Adjustment of employees of the Bihar Intermediate Education Council.--(1) On and from the date of repeal of the Bihar Intermediate Council Act, 1992, all employees of the Council, shall remain, in employment, as if the Act has not been repealed and they shall continue to be paid same salary and allowance as was payable on the date of repeal of the Act till such time State Government has taken such final decision as is provided hereinafter.

(2) The State Government shall constitute a Committee of Secretaries consisting of three Secretaries who shall prepare a detailed scheme of absorption, retirement, compulsory retirement or voluntary retirement, screening appointment and other service conditions of employees of the Council. The scheme prepared by the Committee of Secretaries shall be placed before the Government within four months from the date of enforcement of the present Act:

Provided that it shall be open to the Government to modify, amend or suggest modifications or amendment in the scheme and the scheme thereafter shall be made operational in such form and intent as finally approved by the Government. Scheme approved by the Government shall be considered as statutory scheme framed under this Act.

(3) After the scheme approved by the Government is enforced it shall be fully implemented in its approved form and intent within three months from the date of its enforcement.

(4) The Committee of Secretaries constituted under sub-section (2) of Section 3 above shall be competent to decide utility and deployment of employees of the Council during transaction period and it shall not be open to any employee to question decision of Committee of Secretaries:

Provided that the State Government shall be competent to amend, modify, alter or substitute the scheme so framed for removal of any difficulty in its implementation.

27. The aforesaid provision clearly mentions that from the date of repeal of the Act of 1992, all the employees of the Council shall remain, in employment, as if the Act has not been repealed and they shall continue to be paid same salary and allowance as was payable on the date of repeal of the Act. Hence, after the repeal of the Act, 1992 in the year 2007, the petitioners stood adjusted in the Board in the same situation as if the Act of 1992 had not been repealed and they

were entitled to be paid the same salary and allowance as was paid to them in the Council immediately prior to the date of repeal; meaning thereby that they continued on the posts of Assistants in the Board, on which posts they were functioning at the time when the Act of 1992 was repealed and the Council was abolished.

28. No doubt, Clause 2 of Section 3 of the Repeal Act, 2007 provided that the State Government shall constitute a Committee of Secretaries consisting of three Secretaries, who shall prepare a detailed scheme of absorption and other service conditions of employees of the Council and the State Government may make amendment or modification in the scheme, whereafter it would be operational as statutory scheme framed under the said Act and shall be implemented in its approved form. However, the Board has failed to show that any such Committee of three Secretaries was constituted.

29. Much subsequently on 17.7.2012 the Board constituted a five Member Screening Committee with an ex-Vice Chancellor, a retired Finance Officer, a retired Deputy Collector, a retired Member, College Service Commission and a retired Section Officer of Education Department with respect to the absorption of the employees of the erstwhile Council into the Board. The said Committee submitted its report on 27.8.2012 relying upon a decision of the Apex Court in case of Uma Devi (supra) and recommending that only such employees should be considered in the service of the Board from the date of their absorptions and would be entitled to emoluments available to the employees of the Board, who were appointed strictly according to the provisions of law. The said report was approved by the Board in its meeting on 31.8.2012, whereafter office orders were issued for absorption of the petitioners on 12.9.2012 absorbing petitioner no. 1 on the post of Assistant and petitioner no. 2 on the post of L.D.C.

30. Although learned counsel for respondent-Board argued that it had approved in its meeting dated 31.8.2012 the aforesaid report of the Five Member Committee dated 27.8.2012 and had passed the impugned order of absorption of the petitioners dated 12.9.2012 as the said report was prepared by the Committee relying upon the decision of the Apex Court in case of Uma Devi (supra), but the said decision of the Apex Court was with respect to regularization of temporary, contractual, casual, daily wages or ad hoc employees, appointed/recruited de hors the constitutional scheme of public employment, whereas, in the instant case the petitioners were permanent employees of the Council and had continued on permanent posts without any objection from any quarter since several decades and hence there was no question of their services being temporary, contractual, casual, daily wages or ad hoc nor there was any question of regularization of their services rather the only issue was their absorption in the Board on the same posts, on which they were working earlier as per the provisions of the Repeal Act of 2007.

31. Even in a case where temporary, contractual, casual, daily wages or ad hoc appointments made were irregular, the Apex Court in the aforesaid decision in

case of Uma Devi (supra) had made the following observations:--

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

32. Thus, it is quite apparent that neither the decision of the Apex Court in case of Uma Devi (supra) was attracted in the instant case nor it was followed either by the Five Member Committee or by the Board, which approved the said report and passed the impugned order. Furthermore, the Repeal Act of 2007 clearly provided that the State Government shall constitute a Committee of Secretaries, consisting of three Secretaries, for preparing a detailed scheme with respect to service conditions of the employees of the Council absorbed in the Board, but there is nothing to show that any such Committee was constituted nor its report has been produced by the respondents and in the meantime the petitioners were allowed to continue for about five years on the posts, on which they were working in the Council.

33. Moreover, the Government of Bihar, Education Department, issued resolution dated 12.7.2012, notified in the Bihar Gazette (extraordinary), reiterating the constitution of the Committee of three Secretaries and under Clause-X thereof, it was provided that after their absorption the employees of the Council would be treated as the employees of the Board and they would be entitled to all the salaries and benefits of the employees of their said cadre in the Board and only when the services of such employees were found to be not valid, it would be covered by the decision of the Apex Court in case of Uma Devi (supra) as provided in Clause-II of the resolution.

34. From a perusal of the aforesaid case law, resolution and other provisions, it is quite apparent that the appointments of the petitioners cannot be legally held

to be invalid and even the act of the authorities by reducing the rank of the petitioners showed that they were not illegal appointees because had their appointments been illegal or invalid, their services would have been altogether terminated. The impugned action has been taken only on the assumption that the petitioners did not fulfil the legibility (sic--eligibility?) criteria.

35. The abovementioned assumption has been fully disproved by the advertisement of 1982, the appointment of the petitioners on the sanctioned posts of Assistants by the State Government vide order dated 21.2.1986, grant of Sr. Selection Grade in the rank of Assistants to the petitioners vide office order dated 5.10.1991, promotions granted to the petitioners on sanctioned posts of Section Officers with effect from 2.6.1992 vide office order dated 4.7.1994 after the posts were approved by the State Government, their regular continuance in the service of the Council till it was abolished in the year 2007 and by their continuance on the posts concerned in the Board from the date of Repeal Act, 2007 when the employees of the Council including the petitioners were adjusted in the Board till the impugned orders were passed five years later.

36. The respondents have placed much reliance on the Government resolution dated 2.1.1985 (Annexure-"E"), but it was meant only for the employees of Secretariat and its attached offices and hence it was clearly not applicable to the employees of the Board as neither the Government had passed such orders nor the Board had adopted such resolution. Furthermore, the petitioners had been originally appointed much earlier in January, 1983 on the basis of advertisement of 1982. It is not in dispute that the initial appointment of the petitioners was only for two months, but the petitioners were allowed to continue on daily wages till their permanent absorption by the State Government vide office order dated 21.2.1986, which fact is apparent from the said order. Furthermore, in the said office order it was clear that those, who had passed the secondary school examination, would be treated as Routine Clerk and hence the petitioners having passed Intermediate Examination, were not treated as Routine Clerks, rather they were appointed on the posts of Assistants and by that time they had also acquired sufficient experience.

37. Admittedly, both the petitioners are Intermediate, which was the requisite qualification given for the post of Assistants in the advertisement. In the report of the Five Member Committee itself, it was admitted that as per the Ordinance/ Act concerning employees of the Council, the same service condition was applicable, which was in existence for the employees of the University and at the time of selection of the petitioners to the posts of Assistants in the Council, the requisite qualification for appointment of Assistants in the Universities of Bihar was also only Intermediate and not Graduate. Hence, the much subsequent enhancement of requisite qualification for such post by the Government or by the Board cannot legally affect the appointments/promotions of the petitioners either for the posts of Assistants or for the posts of Section Officers.

38. So far question of experience is concerned, the objection of the respondents

is that advertisement required experience, which the petitioners did not possess at the time of advertisement. In this connection, it has to be noted that the petitioners were not directly appointed rather they were first appointed on daily wages and were later regularized by the State Government and hence the said criteria cannot be made applicable to case of the petitioners and even if there was lack of experience at the relevant time, the same is made good now and hence a new exercise, ordered after several decades, cannot legally lead to anomalous results. The law is well-settled that if a person has been appointed, lacking in experience, but otherwise eligible and qualified for the post concerned and permitted to continue on the said post for considerably long time of 15-20 years or more, his initial appointment cannot be held to be faulty on that count. In this connection, reference may be made to a decision of the Apex Court in case of *Buddhi Nath Chaudhary and Others Etc. Vs. Abahi Kumar and Others*, as well as a decision of the Allahabad High Court decision-- *R.N. Chaturvedi Vs. The State of U.P. and Others*, Apex Court in case of *R.N. Chaturvedi Vs. The State of U.P. and Others*, .

39. It is thus apparent that the petitioners were fully qualified at the relevant time for the posts, on which they were appointed. So far experience is concerned, they had also acquired a very long experience without suppression of any material or playing fraud upon the Council or the Board and hence by lapse of such a long period, the petitioners had acquired certain right as doctrine of condonation will be applicable. Thus, the said plea of absence of experience after lapse of such a long time is not available to the Board, besides it hits the principle of natural justice. In this connection reference may be made to a decision of the Division Bench of this Court in case of *Bihar State Road Transport Corporation vs. Asoda Devi & Ors.*, reported in 1998 (3) P.L.J.R. 332.

40. Considering the matter in its entirety after full appraisal of the pleadings of the parties and the materials produced by them, it leaves no doubt that the impugned action of the authorities of the Board is absolutely illegal and perverse as there was no occasion for the respondent-authorities to remove the petitioners from the posts, on which they were working in the Council before the abolition of the Council by Repeal Act of 2007 and absorption of its employees in the Board. Accordingly, this writ petition is allowed and the impugned order, so far it relates to the petitioners, is quashed and the Board and its authorities are hereby directed to adjust/absorb the services of the petitioners on the posts of Section Officers or on any post of the same scale in the Board and to give all such benefits to them of the said posts from the date, on which the Council was abolished and its functions were directed to be discharged by the Board by the Repealing Act of 2007.