

(2000) 02 PAT CK 0153

In the Patna High Court

Case No : C.W.J.C. No's. 1377, 1522, 1572, 1601, 1999, 2066, 2776, 2808, 2849, 2907, 2913, 2942, 2957, 2972, 2982, 3086, 3339/97 (R) , 57, 151, 405, 440, 465, 818, 968, 986, 1096, 1181, 1183, 1198, 1211, 1243, 1635, 2104 2108, 2766, 2967/98 (R) and LPA No. of 1998

Babban Prasad Singh and Others etc. etc	APPELLANT
Vs	
State of Bihar and Others State of Bihar and Others Vs Kishore Rai and Others	RESPONDENT

Date of Decision : 28-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 16, 226
Industrial Disputes Act, 1947 — Section 25F

Citation : (2001) 4 PLJR 638

Hon'ble Judges : S.N. Jha, J;P.K. Sinha, J

Bench : Division Bench

Advocate : Ritu Kumar, for the Appellant; R.K. Marathia and R.N. Sahay, Ritu Kumar in LPA No. 179 of 1998 (R), for the Respondent

Judgement

S.N. Jha, J.—Property is a perennial cause of dispute. Only the form changes. There was a time when land and tenancy disputes held the centrestage of litigation. No more now. With the turn of time the attitude has changed. People care less for land than for jobs and business. Litigation is assuming new colours and dimensions. With the growing preference for jobs specially Government and Semi-Government jobs, and with the nature and volume of Governmental activities also expanding and the Government engaging large work force in exigency of administration, Courts are replete with petitions seeking regularisation of the casual and temporary engagements made on daily wage basis or otherwise. This batch of 36 writ petitions and one loiters patent appeal involve the same dispute.

2. A small distinction between the cases may be pointed out at this stage. By resolution dated 18.6.93, which I shall refer to soon after in this judgment, the State Government fixed a cut-off date, viz., 1.8.85 for the purpose of making the

employees working on daily wage, muster roll etc. regular. Some of the writ petitions are on behalf of persons engaged after the cut-off date i.e. 1.8.85, who have since been either removed from the rolls or not paid wages; other petitions are on behalf of persons engaged earlier. Another category of petitions is on behalf of persons who claim to have been provided employment in lieu of land said to have been acquired in execution of certain Scheme or project, though, it must be pointed out here itself, there is no material to suggest that the engagement was in lieu of acquisition of land. As, however, they also claim to have been working for long periods the dispute in their cases also boils down to the claim for regularisation. A learned Single Judge noted that contradictory orders have been passed in similar cases and accordingly referred these cases to the Division Bench. C.W.J.C. No. 1518 of 1997(R) giving rise to L.P.A. No. 179 of 1998(R) is one such case. Therein the learned Single Judge directed the Respondents to consider the cases of the concerned Petitioners along with similarly situate persons for their regularization. Dissatisfied with the order, the State has preferred the said appeal.

3. C.W.J.C. No. 1522 of 1997(R), C.W.J.C. No. 2928 of 1997(R) and C.W.J.C. No. 2766 of 1998(R) have been argued as representative cases on behalf of the aforementioned three sets of claimants. The relevant facts, as stated in the respective petitions, may shortly be mentioned as follows.

4. In C.W.J.C. No. 1522 of 1997(R) the Petitioners were engaged to work as Mechanics and Electricians on 1.2.78 and 1.9.78 on daily wages in the Minor Irrigation Department against sanctioned schemes. They claim to be working without a single day break/leave. On 30.3.90 the Executive Engineer, Minor Irrigation Division, Ranchi prepared a list of daily wages employees in which their names were mentioned at serial Nos. 97 and 105. According to the Petitioners, on 18.6.93 vide resolution of the State Government contained in memo No. 5940 of the Personnel and Administrative Reforms Department, a procedure was laid down for regularisation of daily wage employees in the light of the agreement reached with the Employees' Association. In the light of the said policy decision, a seniority list of Mechanics and Electricians working in the Minor Irrigation Division, Ranchi was published in 1995 wherein the names of the Petitioners were; mentioned at serial Nos. 2 and 8. However, till date, their services have not been regularised. According to the Petitioners, in Ranchi district alone there, were about 60 sanctioned schemes in the Minor Irrigation Division upto 1989-90, and the number has increased over that years. In Kanke Block itself, it is there were ten schemes the maintenance of which has been looked after by the Petitioners since 1.2.78 and 1.9.79. According to the Petitioners, as they are working since much prior to cut-off dates and against sanctioned schemes and vacant posts, their services should be regularised. They rely on certain order passed by this Court as mentioned in the writ petitions.

5. In C.W.J.C. No. 2982 of 1997(R) the Petitioner claims to be working continuously since 17.8.85 as Jeep Driver On 17.12.94 the Executive Engine

Chaibasa vide his memo No. 707 of date sent a list of Drivers to the Additional Secretary, Minor Irrigation Department Government of Bihar, in which the name of the Petitioner was included. Another list of daily wage employees was prepared pie Executive Engineer, Minor Irrigation Division, Chaibasa on 3.2.97 in which also the name of the Petitioner was induce and he was shown as working in the Jhikdhani Subdivision Scheme. Although the Petitioner's name was manned in the said two lists and he was shown as a working employee, payment salary was suddenly stopped from 12.4.94. The Petitioner apprehends that his services may be terminated in the light of the aforesaid policy decision dated 18.6.93 though no order has been communicated nor any show cause notice issued to him.

6. In C.W.J.C. No. 2766 of 1998(R), the Petitioners claim to be "land-losers" and seek regularisation of their services, According to them, the lands in question (sic) to the six Petitioners were acceded for construction of pump house, (sic) room, residential quarters etc. for the year 1984-85 on the assurance that the will be given employment and commission will also be paid to them. No sensations was paid. The Petitioners, never, were appointed on different in the years 1986 and 1987 to work chaukidars from the dates of their (sic) appointment upto August 1988. They were also paid their wages. Sud-(sic) in view of the policy decision dated (sic) as their appointment was sub-(sic) to the cut-off date, payment of was stopped to them without issued order. The Petitioners contend having worked for more than 240 the termination of their services is and they are entitled to regularization the services. It is said that vide of the Joint Secretary, Minor Irrigated Department, dated 28.5.86, one post of Operator and Chaukidar has been sanctioned in each scheme of the Minor Irrigation Department and there are thus posts available against which they can be regularised.

7. The Respondents have filed counter affidavit in all the above three cases. In the counter affidavit filed in C.W.J.C. No. 1522 of 1997(R) it has been stated that the matter relating to regularisation of the services of persons working on daily wage/casual basis was considered by the State Government in the Department of Minor Irrigation. It was found that there are as many as 3200 daily wage and 314 work charged employees working under different Regional offices for different period since 1976 but as there is no sufficient work for them nor there is fund for payment it is not possible to regularise all of them. It is said that there are only 264 sanctioned posts in the department in different Regional Offices. The matter regarding regularisation of the daily wage employees, however, is still under consideration. In the counter affidavit filed in C.W.J.C. No. 2982/97(R) it has been stated that the Petitioner is working as Jeep Driver from 17.8.85 but not in any sanctioned scheme. It has also been stated that although there are 17 schemes under Minor Irrigation Division, Chaibasa only six are in operation. Besides, as the Petitioner was engaged after the cut-off date and many more persons working since much prior to the cut-off date are still waiting for their regularisation, it is not possible to regularise his services. In the counter

affidavit filed in C.W.J.C. No. 2966 of 1997(R) the Respondents have denied that the lands in question were acquired by the Government. It is said that the Petitioners had rather voluntarily given away the lands in question in their own interest since the construction of the pump house etc. would have provided irrigation facilities to them. In any view, there is no provision to give employment to any person whose land may be acquired. For acquisition of land the remedy is compensation. In any case there is no question of appointment of any person without following the prescribed rules for recruitment.

8. Ms. Ritu Kumar, learned Counsel for the Petitioners, submitted as follows. Though the State Government came out with a policy decision in the matter of regularization, as contained in its resolution dated 8.8.91, no concrete step has been taken to regularise the services. The stand of the Respondents that only 264 sanctioned posts under different Regional offices in the entire Minor Irrigation Department are available is not correct. To illustrate her point she referred to a booklet containing the particulars of the schemes and stated that as one post each of pump operator and Chaukidar were sanctioned for each scheme there should be hundreds of posts of pump operators and Chaukidars in Ranchi Division alone. In any view, as the Petitioners concerned have been working for long periods--in many cases for 20 years or so--it would only be appropriate to direct the Respondents to regularise their services. Regarding fixing 1.1.85 as the cut-off date counsel submitted that the date has been arbitrarily fixed without any basis and should be struck down and as the concerned Petitioners too have put in long service they should be regularised. In any case, as they are still continuing to work there can be no justification to deny salary to them. The Respondents in the circumstances, should be directed to regularise the services of the Petitioners and pay them arrears of salary on equal pay for equal work basis, in support of the contention reliance was placed on *State of Haryana and others Vs. Piara Singh and others etc. etc.*, ; *Chief Conservator of Forests and another, Vs. Jagannath Maruti Kondhare, etc. etc.*, ; *Union of India and Others Vs. Dharma Pal and Others*, ; *State of Haryana v. Surender Kumar* (1997) 3 SCC 333; *Arun Kumar Rout and Others Vs. State of Bihar and Others*, ; and *Braj Kishore Singh and Others Vs. State of Bihar and Others*, .

9. On behalf of the Respondents, Shri R.K. Marathia, Government Pleader No. 2, submitted that the matter regarding regularisation of services of the daily wage employees in the Minor Irrigation Department was, considered in the light of the earlier decision dated 18.6.93 and detailed instructions were issued with respect to the daily wage/work charged employees of the Minor Irrigation Department vide letter No. 1758 dated 18.3.96 and the question relating to regularisation of services of the employees of the Minor Irrigation Department has, thus, to be considered in the light of the decision contained in the said letter. He contended that 18.6.93 resolution is general in nature and there being a subsequent decision with respect to the employees of the Minor Irrigation Department itself it is the latter which would prevail over former. It was stated that in course time work in Minor Irrigation Department fell considerably, several schemes which

were in operation closed down and there are only 264 sanctioned posts available now. The total work force of 3200 wage employees and 314 work char, employees therefore cannot be regularised. He urged that no direction regularising the services of the Petitioners alone ought to be issued, for there are several others who might be placed, if not better than the Petitioner and if in that view of the matter a general direction is issued to consider the case of Petitioners and others as well, it would amount to regularising the services of 3514 persons though there are neither sanctioned posts available nor sufficient work is there nor there is fund from which payment can be made. He pointed out that though there is a humanitarian element in the Petitioners' case, while considering their claim the Court ought also to consider the likely financial burden on the state to be caused on account of their regularisation which may not be in public interest. He contended that the Petitioners and others having got employment by back-door method cannot claim any legal right for regularisation of their services. In support of the contentions reliance was placed on *J & K Public Service Commission v. Dr. Narendra Mohan* 1994 (2) SCC 620; *C.A. Shankar Prasad v. Karnataka State and Adult Education Council* AIR 1994 SC 206; *State of U.P. v. U.P. Madhyamik Shiksha Parishad Shramik Sangh* AIR SC 708; *State of U.P. Suresh Kumar Verma*, (1996) 7 SCC 2; *State of U.P. v. Ashwani Kumar* : (1996) 1 SCC 773; *State of H.P. v. Nodha Ram* AIR 1997 SC 1145 *State of U.P. and Others Vs. Ajay Kumar*, ; and *Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others*, .

10. It is not possible to issue any (sic) for outright regularisation of the employees working on daily wage/casual. The order couched in the form of direction "to consider" also is often interpreted as a direction to regularise. The Supreme Court disapproved such an order passed by the High Court in the case of *State of U.P. and others Vs. U.P. Madhyamik Shiksha Parishad Shramik Sangh and another*, ; *State of U.P. v. Suresh Kumar Verma* : (1996) 1 SCC 773 and *State of U.P. and Others Vs. Ajay Kumar*, . In *State of U.P. v. Nodha Ram* AIR 1997 SC 1145, the Supreme Court observed that such a direction would amount to creation of posts. In *State of U.P. v. Suresh Kumar Verma* (supra) the Court observed that the regularisation process cannot be converted into a recruitment process. In *J & K Public Service Commission v. Dr. Narendra Mohan* (1994) 2 SCC 60, the Supreme Court disapproved the direction of the High Court regarding regularisation of ad hoc lecturers made in violation of the rules. In different cases it has been emphasised that the recruitment is an executive function, and it is for the Government to create posts and make appointment on such posts, and where the number of posts is less than the number of claimants, to frame a scheme consistent with Articles 14 and 16 of the Constitution for their absorption.

11. In one sense the term "regularization" means giving scale of pay and allowances instead of daily wages and not converting the engagement into regular appointment. This, however, is not what the Petitioners want. Nonetheless, at the appropriate stage in this judgment I shall consider the question of payment of salary. At this stage I wish to emphasise that persons

working on daily wage/casual basis cannot be brought in the regular establishment of the Government. Firstly, such a direction cannot be and ought not to be issued in the case of Petitioners of the particular case. Simply because some persons have approached the Court while others have not cannot be a ground to deny relief to them or to confine the relief to only the Petitioners before the Court, and if all were to be considered for being made regular, candidates from open market may not get any chance or opportunity to get employment under the State. And who are the persons working on daily wage basis. Many of them might have been engaged bona fide in exigency of situation of administration, but in their cases also their initial engagement cannot be said to be in accordance with law. It would have had some respectability and legality if at the initial stage some selection had been made and norms had been followed. But even then if the engagement was for particular work or project or scheme, which the Government or any undertaking had per force to make, there may not be justification to make them regular if the posts on permanent basis are not available. It is true, in some cases the courts have taken the view that where the engagement continues for long periods, a presumption arises as to the permanency of the work, but this certainly is a question of fact which has to be ascertained in the particular case. Courts have also held that where initial appointment (read engagement) was illegal and violative of the mandate of Article 16 of the Constitution, the person does not acquire any right to the post. The limitation on the power of the High Court to direct the State Government to fill up the vacancies also ought to be kept in mind. Simply because vacancies exist, even in permanent posts, it does not mean that the Government must necessarily fill them. It may, in public interest, such as lack of finance or cessation of adequate work, decline to make appointment against such vacancies.

12. The other important aspect of the case is that a large chunk of employees working on daily wage/casual basis are those who were initially engaged on extraneous considerations and managed to continue in employment. The situation prevailing in the State was eloquently described by this Court in the case of *Mahendra Ram v. Dy. Commissioner, Palamau* 1989 HLT 27 in these words:

It is our judicial experience that Article 16 in this State is observed more in its breach. Appointments are made initially for a temporary period but thereafter continued sometimes under specific orders and sometimes without any order being passed. After sometime the appointee claims that by reason of his continuous officiation against a post, he should be regularised. It appears that even the authorities do not realise that regularisation does not mean permanence since very often it has been urged before us that a person whose appointment has been regularised becomes a permanent employee under the State. Article 16 is breached with such impunity that one cannot possibly ignore the phenomenon.

13. All said, the claim of such persons who have remained in the employment of

the State for long periods, those who have spent the golden period of their lives in the service of the State, those who with the passage of time have (sic-become ?) ineligible for appointment elsewhere, cannot be ignored altogether. This does not mean that there should be en bloc regularization or appointment of the daily wage employees without considering, individually, the merit of the candidates. Mere long officiation or seniority should not be regarded as sufficient. It may not be in public interest to make a person regular, even though his conduct or performance has not been upto the mark and better candidates who have performed their job with devotion and sincerity, are available. That is why the Courts have emphasised the desirability of framing scheme for regularization.

14. The Resolution of the State Government dated 18.6.93 (supra) is said to contain scheme for regularization, and considerable argument has been made on the basis of the said resolution. It would be appropriate to notice the salient features of the scheme at this stage.

15. It is worth mentioning here that the decisions as contained in the said resolution were taken in the light of the agreement reached with the Non-gazetted Employees' Federation/Coordination Committee in February 1992 in the context of demand made for regularization of daily wage, muster roll, casual employees. The agreement was that the Departmental Committees shall take decision for regular appointment after ascertaining the availability of sanctioned posts on the cut-off date fixed for Slat purpose taking into account the reservation rules, qualifications, requirement of the posts, and observing the rules relating to advertisement of the vacancies. The resolution states that in the light of the said agreement, after due consideration the State Government had leaded to give preference to daily wage/muster roll/casual employees etc. in making regular appointment on sanctioned vacant posts. The details of the decision have been mentioned in 13 sub-paragraphs. Since some of them are over-lapping or repetitions, I do not purpose to refer to them in seriatum. I would better mention their substance as lows:

(i) In the past instructions relating ?to appointment of daily wage employees on vacant sanctioned posts had been issued from time to time and direction had also been issued not to make such appointment in Government offices and to cancel such irregular appointment made after 1.8.85. The cut-off date accordingly shall be 1.8.85.

(ii) Those who were appointed prior to 1.8.85 and had remained in employment for at least 240 days shall be considered for being given preference, other things remaining the same.

(iii) The circulars of the Personnel and Administrative Department issued from time to time regarding appointment in Class III/IV posts shall be applicable.

(iv) The vacancies in the sanctioned posts shall be aforesaid with reference to 1.10.90. Vacancies in Class IV posts shall be ascertained in the light of the Circular No. 3110 dated 10.4.86 of the Finance Department.

(v) Decision be taken whether it would be in the interest of work to fill the vacancies in sanctioned posts.

(vi) In filling the vacancies the rules relating to compulsory notification of the vacancies perhaps, this refers to Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 shall be followed.

(vii) In making appointment the prescribed qualification specially the minimum educational qualification and experience for the concerned posts shall be taken into account.

(viii) The rules of reservation shall be followed.

The resolution contemplates constitution of Committees headed by the Departmental Secretary in each Department for regularizing the services of daily wage employees, and similar committees headed by the Chairman of the Public Bureau of Enterprises for making similar appointments in public sector undertakings. The resolution lays down that the aforesaid committees shall obtain the desired information from the concerned offices and prepare a panel after following aforementioned modalities giving preference to the daily wage employees on the basis of seniority provided other things are the same. In preparing the panel the rules relating to reservation and roster point shall be observed. If a person included in the panel is found to have crossed the upper age limit for appointment in the Government service, proposal shall be sent for relaxation of the age bar to the Finance Department. The resolution also lays down that services of daily wage employees appointed after 1.8.85 shall be terminated in accordance with the provisions of the Industrial Disputes Act.

16. While discussing the resolution dated 18.6.93 I would like to make some comments. In paragraph 13 above I have observed that it may not be in public interest to make a daily wage employee regular even though his conduct or performance has not been upto the mark merely on the basis of his length of service though better candidates are available. The resolution does not contain any guidelines to take out the grain and reject the chaff. Of course, there should not be any pick and choose selection but merit should be given due weight age. The senior undoubtedly has the right to be considered first, but if everything is not well, it should be permissible to bye-pass his claim and, as a matter of fact, terminate his engagement in accordance with law after observing the procedure laid down in Section 25F of the Industrial Dispute where the Act is applicable. I am conscious of the fact that unscrupulous officers may find it convenient to appoint their favorites in this manner on extraneous consideration. But we cannot proceed on assumptions. And where such a thing happens the person (s) bye-passed are not remediless. They may approach the higher authorities at the first instance and, if need be, a court of law for redressal of their grievance in accordance with law. It is, therefore, necessary that some method is evolved to screen the cases at the time of regularization. The resolution, however, by and large appears to be consistent with the mandate of equality contained in Articles

14 and 16 of the Constitution of India and in conformity with the decisions of the Apex Court.

17. In view of decisions of this Court it is now well settled that notwithstanding the long officiation under the Government the services cannot be made regular, that is to say, the persons concerned cannot be brought under the regular establishment unless posts are available. Equally unexceptionable appears to be the proposition that the decision to fill the vacancies in sanctioned posts has to be taken by the Government, the Court even in exercise of writ jurisdiction under Article 226 of the Constitution cannot issue mandamus to the Government to make the appointment and fill the vacancy, unless the decision of the Government is found to be tainted with the malafide or contrary to public interest. In the above view of the matter, it is plain that no direction can be issued to regularize the services of 3000 and odd employees, particularly when the number of vacancy in the sanctioned posts is said to be only 264. While there may be possibility of the number of the vacancy increasing in course of time on account of retirement or death of the incumbents, surely the number would not be such to accommodate all the daily wages/muster roll/casual employees. All that can be done to provide some respectability to the employment, in the circumstances is to allow them emoluments the scale admissible to the posts. Such benefit, it must be clarified, would be available to the concerned employees only so long as they remain in the employment of the State. Without intending to give a carte blanche to the Government to do away with their employment, the power of the Government to dispense with the services of the employees working on daily wage/muster roll/casual basis cannot be denied, should the exigency of work or administration so require.

18. The above discussions should be sufficient to sum up the case. In fairness to the counsel for the Petitioners, however, I must refer to the decisions cited by her in support of her contentions. The case of Chief Conservator of Forests and another, Vs. Jagannath Maruti Kondhare, etc. etc., had arisen from an Award of the Industrial Court and the main issue was whether engagement for periods ranging from 100 to 300 days was intentional to deprive the persons of the status of permanent employees and amounted to unfair labour practice. The Supreme Court answered the question in the affirmative, but dealing with the submission that a large number of casual employees were available, the Court clarified (at page 2903 of the report):

I would however observe that the relief made available in the Respondents is not one which would be available ipso facto to all the casual employees either of the Forest Department or any other Department of the State. Claim of casual employees for permanency or for higher pay shall have to be decided on merits of their own case.

The aforequoted observation, it would appear, rather lends support to the Respondents case and my observations made hereinabove than the plea of the Petitioners.

19. In *Union of India and Others Vs. Dharma Pal and Others*, , the Supreme Court approved scheme framed by the State Government pursuant to the earlier direction of the Court and issued direction to regularize the services of the persons concerned in the light of the said scheme. In *Arun Kumar Rout and Others Vs. State of Bihar and Others*, , the Supreme Court observed that though the Appellants had no legal right to the posts and their services could be terminated, taking a sympathetic view of the matter, 50% vacancies were reserved for the Appellants and their cases were directed to be considered against those vacancies. The Court, however, it is relevant to point out, made it clear that the direction was being issued in the facts of the case and would not be treated as precedent. The decision, therefore, can be of no avail to the Petitioners.

20. The decision in *State of Haryana v. Surendra Kumar* (1997) 3 SCC 333 also is of little help. In that case the Petitioners had sought direction for payment of salary on "equal pay for equal work" basis. Negating the claim the Court directed the Government to consider the cases for regularization in accordance with the decision in *Piara Singh's* case (supra). In *Patna Citizen Forum Vs. State of Bihar and Others*, , the point was entirely different. The point was whether approval of the State Government in the matter of creation of posts was essential where the posts fall within the staffing pattern approved by the Government. While upholding the Petitioners' contention that no much approval was required, if the post is in accordance with the approved staffing pattern, this Court observed as regards the Petitioners of the case, that as the initial appointment had been made after advertisement and by the competent authority their case should be considered.

21. *Piara Singh's* case upon which much reliance was placed by the counsel for the Petitioner now remains to be considered. In that case the High Court had inter alia held that those who had put in one year's service as ad hoc/casual/temporary employees were entitled to regularization. The Supreme Court disapproved the direction of the High Court. The Court emphasised that while giving direction for regularization of services the Court should act with due care and caution. Since regularization of the services of the temporary/casual employees would tell upon the public exchequer by increasing the cadre strength of the particular service a practical and pragmatic view is required to be taken. And the Court, therefore, should take into account the availability of the posts and finance as well as the availability of the work, the Supreme Court observed that while the normal rule of appointment is regular recruitment through the prescribed agency the exigency of the administration may sometime call for ad hoc or temporary appointments to be made. In such a situation, efforts should be made to replace such ad hoc/temporary employees by regularly selected employees as early as possible. Such temporary employees must also compete along with others for such regular selection/appointment, and if they are not selected they must give way to the regularly selected candidates. The only direction which the Supreme Court finally issued vide paras 27 and 19 was "to

verify the vacancy position in the categories of daily wagers and casual labour and frame a scheme of absorption in a fair and just manner providing for regularization of those persons, having regard to their length of service and other relevant conditions." The Court observed that as many persons as possible may be absorbed. I fail to understand how the decision in Piara Singh's case can be of any help to the Petitioners.

22. It would, thus, appear that in none of the abovementioned cases the Supreme Court issued direction to regularize the services. Where it has done so, like the case of C.A. Shankar Prasad and others Vs. Karnataka State Adult Education Council and others, , the order has to be treated as an order under Article 142 of the Constitution. Such an order does not lay down any principle which could be said to have binding effect. In State of U.P. and others Vs. U.P. Madhyamik Shiksha Parishad Shramik Sangh and another, , the direction of the High Court to regularize the services and pay equal salary was set aside even though the persons concerned had worked for 15 years on the stand that the posts were not available.

23. In the present case, the State Government has already framed scheme which by and large appears to be in accordance with the direction of the Supreme Court in Piara Singh's case and other cases on the point, subject to some modification which I have suggested hereinabove in paragraph 18. In these premises, these writ petitions have to be disposed of with a direction to the State Government to make necessary modification in the scheme and to consider the (sic) cases of the Petitioners and others in accordance with such scheme and in the light of observations made in this judgment as early as possible, preferably within six months. The Petitioners, however, in the meantime, shall be entitled to salary at the minimum of the scale admissible to the posts on which they are working. In any case, they will be entitled to remuneration for the I work already performed by them, after I proper verification of the records in accordance with rules.

24. In view of the discussions made hereinabove, the order of the learned Single Judge dated 17.4.98 impugned in L.P.A. No. 179 of 1998 directing regularization of the services from the date of filing of the writ petition within one month cannot be sustained, which is accordingly set aside and the concerned writ petition as well as the present batch of writ petitions are disposed of with the observations and directions made above. There will be no order as to costs.