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**(2012) 05 JH CK 0119**

**In the Jharkhand High Court**

**Case No : Writ Petition (S) No. 3210 of 2003**

Bharat Bhushan Prasad and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision : 04-05-2012**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226

**Citation : (2012) 4 JCR 53**

**Hon'ble Judges : P.P. Bhatt, J**

**Bench : Single Bench**

**Advocate :** Anil Kr. Upadhaya, Vijay Shanker Jha and Kailash Pd. Deo, for the Appellant; J.P. Jha and Pramod Kr. Choudhary for the Respondent Nos. 2, 3 and 4, for the Respondent

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## **Judgement**

P.P. Bhatt, J.—Heard the learned counsel for the petitioners as well as learned counsel for the State. Perused the papers.

2. The petitioners, by way of the present writ petition, under Article 226 of the Constitution of India, have prayed for a direction to the respondents to grant the pay-scale of lecturer at basic scale on the basis of principle of "Equal Wages for Equal Work" and accordingly, direct the respondents to grant arrears as well as current salary to the petitioners in the basic scale of lecturer with all admissible allowances. It is further prayed for a direction to the respondents to consider and grant the pay-scale at par with similarly circumstanced ad hoc lecturer, Shri Nikudimus Tuddu, Lecturer, Santhali in Sahebgunj College, Sahibganj, a constituent unit under the same Sidhu Kanhu University, Dumka. It is further prayed for a direction to the respondents to immediately take steps for regular appointment of lecturer in A.S. College, Deoghar in the faculty of science and while making appointment of lecturers in science faculty give due weightage "to the petitioners for the past 15 years services as ad hoc lecturer in A.S. College, Deoghar.

3. It is the case of the petitioners that they are working on ad hoc basis, for the

last nearly 15 years in A.S. College, Deoghar, a constituent unit of the Sidhu Kanhu University, Dumka and they are entitled to scale commensurate with the job and at least at par with other ad hoc lecturer on the principle of "Equal Wages for Equal Work" as they are discharging the same responsibility of a regular lecturer in the science faculty. It is the case of the petitioners that they were appointed as lecturers in A.S. College, Deoghar on 26.05.1987 and 01.07.1988 respectively in the Department of Physics and Botany and at the time of appointment of the petitioners, the College was constituent unit of Bhagalpur University and instruction up to B.Sc. was imparted in the College in question since 1984. However, no post in science faculty was sanctioned and as such, to meet the exigency of the situation, petitioners and others were appointed as ad hoc lecturers, as it was practised in almost all the Universities in the State of Bihar, where appointment of lecturer was not made for years together and due to shortfall of the teachers, teaching was adversely affected.

4. The learned counsel for the petitioners submitted that the issue regarding regularization/appointment of ad hoc teacher was agitated in various proceedings including in W.P. Nos. 65, 961 and 982 of 1989 and SLP No. 11078 of 1989. It is further submitted that the Hon''ble Supreme Court considering the peculiar facts and circumstances of the case on 10.02.1989 gave a direction to the University to maintain status quo. It is further submitted that the said writ petition and SLP No. 11078 of 1989 was disposed of by the Hon''ble Supreme Court vide order dated 6.12.1989 by giving certain directions and thereafter, since there was an inadvertent error in the said order, clarification was sought by the parties and accordingly, the Hon''ble Supreme Court made clarification vide its order dated 15.01.1990.

5. It is the case of the petitioners that they were working on ad hoc basis as lecturer, Physics and Botany respectively in A.S. College, Deoghar before 10.02.1989 and they were sought to be removed vide order of the University dated 10.04.1989 and they were party in the aforesaid writ application and SLP before the Hon''ble Supreme Court and as per the order contained in Annexures-2 and 2/1. petitioners were reinstated under the order of the Registrar of the then Bhagalpur University as contained in letter No. D/4931-5005. Thereafter, on 18th September, 1990, the Principal, A.S. College, Deoghar vide letter No. 16 of 1990-91 intimated the Vice-chancellor of the then Bhagalpur University about the reinstatement of ad hoc lecturer pursuant to the direction of the Hon''ble Supreme Court in SLP No. 11078 of 1989 and the Notification of the University dated 15.09.1990, the Principal also intimated that the ad hoc teachers including the petitioners have resumed their duties on 17.09.1990. Thereafter, on 29.10.1990, the Principal of the College made a request to the Vice-chancellor for release of fund for payment of ad hoc lecturers including the petitioners for the month of October, 1990 at the rate of Rs. 700/- per month per teacher on ad hoc basis as Rs. 700/- was the basic pay of lecturer. But, according to the petitioners, unfortunately, payment was made to the petitioners and other ad hoc lecturers in scanty manner, without any rational

basis. It is the case of the petitioners that in the year 1992, the Bhagalpur University was bifurcated and a new University, namely, Sidhu Kanhu University was carved out and A.S. College, Deoghar was placed under the Sidhu Kanhu University since 1992. Thereafter, on 29.03.1995, pursuant to the decision of the Syndicate of Sidhu Kanhu University, ad hoc teachers including the petitioners were paid wages purportedly on the basis of the amount paid on 10.02.1989. According to the petitioners, they were appointed on ad hoc basis presumably on the pay-scale of lecturer and i.e. why in all the subsequent letters, the Principal of the College made a request to the concerned University to make payment at the rate of Rs. 700/- per month. However, according to the petitioners, the Officer on Special Duty, Sidhu Kanhu University. Dumka directed the Principal of the College to make payment to ad hoc teachers as per the chart attached with the letter dated 29.03.1995 (Annexure-7). Thereafter, on 04.08.1997. the petitioners and others made a request to the Vice-chancellor through Principal for payment of basic salary of Rs. 2200/- as basic salary of the lecturer was enhanced from Rs. 700/- to Rs. 2200/-. The said representation of the petitioners was forwarded by the Principal of the College to the University authorities. Thereafter, on 25.09.1997, the Registrar issued letter to all the Heads of the Department/Principal of the constituent Colleges to remove all the ad hoc teachers as per the list enclosed with his letter. The name of the petitioners figures as ad hoc lecturer, A.S. College, Deoghar and Shri Nikudimus Tuddu figures at Serial No. 42 at the said list as lecturer Santhali, Sahebgunj College. Sahebgunj. The said order of removal dated 25.09.1997 was challenged by Shri Nikudimus Tuddu in C.W.J.C. No. 10128 of 1997. The Hon'ble Patna High Court vide order dated 10.05.1999, allowed the writ application and quashed the order dated 25.09.1997. It is submitted that similarly the petitioners and others ad hoc teachers of A.S. College. Deoghar filed C.W.J.C. No. 3619 of 2000 and have prayed for quashing of the order of termination, dated 25.09.1997 and the said writ application was allowed vide order dated 05.07.2000 and the impugned order dated 25.09.1997 and the consequential order of termination dated 20th November, 1997 was quashed. Since there was certain typographical error in the said order, the same was corrected vide order dated 30th August. 2000 in M.J.C. No. 2756 of 2000. In view of the order passed in the aforementioned writ petition, the petitioners and other ad hoc lecturers of A.S. College, Deoghar were reinstated vide office order No. 7/2000 dated 5.8.2000 and order No. 24/2000 dated 22.11.2000 (Annexures-12 and 12/1). It is submitted that after reinstatement of the petitioners in A.S. College, Deoghar, repeated request was made to the University for payment of current salary as well as arrears at the rate of Rs. 2200/- basic salary per month. Thereafter, ad hoc teachers of A.S. College, Deoghar moved W.P. (S) No. 4596 of 2001 for basic salary of lecturer and other incidental reliefs. It is submitted that the Hon'ble High Court vide its order dated 21.09.2001, directed the respondents to pay the admitted salary in admitted scale of pay. The writ application was finally disposed of on 13.03.2003 on concession of the parties and the Hon'ble High Court directed payment of Rs. 700/- per month for the period they have actually worked and also current

salary. It is stated and submitted that Shri Nikudimus Tuddu, who was also ad hoc lecturer like the petitioners and who was reinstated pursuant to the order of the Patna High Court like the present petitioners, filed C.W.J.C. No. 2132 of 2001 and prayer was made for regularization of his service and payment of back wages. It is submitted that the Hon"ble High Court vide order dated 1.11.2002 while declining to grant any direction for regularization, disposed of the writ application with observation that the post of lecturer in Santhali should be advertised for regular appointment, if such advertisement is made, the case of the petitioners shall be considered sympathetically by the respondents taking into consideration his past experience. It is submitted that the Hon"ble Court also directed for payment of arrears of salary and current salary/wages within a period of 30 days taking into consideration the judgment of the Hon"ble Supreme Court.

It is further submitted that thereafter, the University calculated and made payment of arrears of salary to Shri Nikudimus Tuddu at the rate of Rs. 2200/- and other admissible allowances and current salary was also paid on the basis of basic salary at the rate of Rs. 2200/- and other allowances like D.A., H.R.A. Etc. It is submitted that in fact, Shri Nikudimus Tuddu was paid as current salary, a sum of Rs. 8200/-and odd. It is further stated and submitted that the petitioners have also learnt that the University is contemplating grant of revised pay-scale at the rate of Rs. 8,000/-basic per month to Shri Nikudimus Tuddu, whereas, differential treatment is meted out to other ad hoc teachers in the matter of grant of pay- scale/salary. It is further submitted that although there is absolutely no difference in the matter of appointment and continuance of Shri Nikudimus Tuddu and other ad hoc lecturers in Sidhu Kanhu University, the differential treatment was given by the respondents. It is further submitted that the petitioners who are not party in the aforesaid C.W.J.C. No. 4896 of 2001. but are continuing as ad hoc lecturer in A.S. College, Deoghar, made representations repeatedly on 21.05.2003, 04.06.2003 and 17.06.2003 to the University for payment of current salary as well as arrears of back wages on the principle of "Equal Wages for Equal Work" and also at par with Shri Nikudimus Tuddu, similarly circumstanced other ad hoc lecturer in the same Sidhu Kanhu University. It is further submitted that the petitioners, who are working as lecturers in Physics and Botany are regularly rendering their service and sharing all the responsibility as regular lecturers. It is further submitted that the State Government through Human Resources Development Department vide Memo No. 144 dated 26.04.2003 granted permanent affiliation to the science faculty of A.S. College, Deoghar up to B.Sc. (Pass course) and (hons.) and after conversion of posts of lecturers of different faculty and colleges, sanctioned 5 posts in Science faculty in A.S. College, Deoghar. It is further submitted that the petitioners are regularly working as ad hoc lecturers having all the necessary qualifications and eligibility for the post of lecturer. It is also submitted that the petitioners" case stands on identical footing in the matter of appointment, and continuance as ad hoc lecturer like Shri Nikudimus Tuddu as ad hoc lecturer of Santhali in

Sahebgunj College in Sidhu Kanhu University and accordingly. they deserve similar treatment like Shri Nikudimus Tuddu as the respondent-University cannot maintain two yardstick and cannot discriminate the petitioners vis-a-vis Shri Nikudimus Tudu in the matter of grant of salary as ad hoc lecturer. It is submitted that it is very unfortunate that the University Is paying Rs. 8,000/- and odd to Shri Nikudimus Tuddu, whereas the petitioners are not being paid even the basic salary of the lecturer and therefore, this discriminatory attitude of the respondents is violative of Articles 14 and 16 of the Constitution of India. It is lastly submitted that the petitioners have rendered almost 15 years of long valuable service as ad hoc lecturers and imparted instruction to Science students up to the level of B.Sc. Hons. for years together and they have spent their time in nourishing and promoting the Science faculty of A.S. College, Deoghar and as such, they deserve preferential treatment in the matter of regular appointment and grant of scale at par with regular lecturer and at least at par with Shri Nikudimus Tuddu, similarly situated ad hoc lecturer in the Sidhu Kanhu University, Dumka.

6. As against that, the learned counsel for the respondent-University by referring to the counter-affidavit filed by the respondent Nos. 2, 3 and 4, Sidhu Kanhu University, Dumka submitted that the petitioners were appointed against unsanctioned posts, as ad hoc teachers in the Department of Physics and Botany on 26.05.1987 and 01.07.1988 respectively in violation of Section 35 of the Universities Act. It is submitted that they were appointed by the then Principal, late H. Narayan. A.S. College, Deoghar in an unauthorized manner without seeking prior permission of the State Government. Their appointment was done without making any advertisement and without conducting any interview and therefore, any appointment made in violation of Section 35 of the Universities Act is a nullity and the Principal is not an authority to create any post and make any appointment thereon. It is submitted that such an appointment is a back door entry at the cost of qualified and genuine candidates, who are deprived of job opportunities. It is submitted that the Principal was not having any power to make such appointment and therefore, the appointments made by the then Principal of ad hoc teachers was without authority of law and contrary to the Universities Act and Statutes. It is further submitted that the petitioners and other ad hoc teachers were terminated on 10.04.1989 but in pursuance of the orders of the Hon'ble Supreme Court, passed in W.P. No. 65,961 and 982 of 1989 and SLP No. 11078 of 1989, dated 06.12.1989/15.01.1990 and that of the Hon'ble High Court, Patna, passed in C.W.J.C. No. 3916 of 2000, dated 05.07.2000/30.08.2000, the petitioners and other ad hoc teachers were reinstated on 05.08.2000/21.11.2000. It is submitted that the petitioners are being paid only the agreed salary and no arrears of salary of the intervening period can be paid to them. It is submitted that in view of the aforementioned orders in C.W.J.C. No. 10128 of 1997 and C.W.J.C. No. 2132 of 2001 as well as in W.P. (S) No. 4596 of 2001 by the High Court of Patna and High Court of Jharkhand, the petitioners are entitled to get the admitted agreed salaries only

as mentioned in their appointment letters or as per the agreement between the University and the ad hoc teachers or as per the University letters. It is submitted that the petitioners are entitled only to get payment of Rs. 250/- and Rs. 200/- per month respectively till their services are not regularized and the adequate fund is not released in this regard by the State Government. It is submitted that payment of agreed/admitted salary in each case of the ad hoc teachers is made by the University as per the earlier letters to the parent Bhagalpur University and the orders of the Hon''ble Supreme Court of India/High Court of Patna/High Court of Jharkhand at Ranchi. It is further submitted that no ad hoc teachers including Shri Nikudimus Tuddu of Sahebgunj College, Sahebgunj is being paid the salary in the pay-scale of Rs. 8,000/- to Rs. 13,200/- as alleged. It is submitted that the decision regarding regularization/ payment of salary in the scale of either Rs. 700-1600/- or Rs. 2200-4000/- or Rs. 8,000 to 13,200/- or termination of such teachers is to be taken by the State Government. It is submitted that the principle of "Equal Wages for Equal Work" is not applicable in the cases of ad hoc teachers as they have already agreed to work on the payment of agreed/admitted salaries and also because they have been appointed illegally in violation of the Universities Act and Statutes and appointment procedure. It is further submitted that no post in the faculty of Science at A.S. College, Deoghar is sanctioned. In fact, 15 posts from different constituent colleges have been transferred to A.S. College, Deoghar for the Science faculty. Their services have yet not been confirmed and no such teacher has been granted higher pay scale up till now. It is submitted that excess payment, if made to any ad hoc teacher beyond the terms and conditions upon which they agreed to work as well as in violation of the orders of the Hon''ble Supreme Court/High Court, is to be realized from their agreed/admitted salary as per financial rules. It is further submitted that no pay-scale along with D.A. And H.R.A. is payable to the petitioners until and unless decision in this regard is taken by the State Government. It is further submitted that the Principal of the College is not entitled to make any recommendation for the payment of salary to an ad hoc teacher in a higher pay-scale. The Principal by making such recommendation, has acted beyond his powers. It is submitted that the representation of the petitioners and other ad hoc teachers regarding grant of higher pay-scale, i.e., Rs. 2200-4000 was rejected rightly by the then Vice-chancellor. It is submitted that the petitioners and other ad hoc teachers are being made payment of admitted/agreed salary ranging from Rs. 200/- to Rs. 700/- per month as per orders of the Hon''ble High Court of Patna and that of the Hon''ble High Court of Jharkhand in C.W.J.C. No. 3916 of 2000, M.J.C. No. 2756 of 2000, W.P. (S) No. 4596 of 2001, C.W.J.C. No. 10128 of 1997 and C.W.J.C. No. 2132 of 2001. It is also submitted that the payment of Rs. 700/-per month to the petitioners of W.P. (S) No 4596 of 2001 as per the order passed by the High Court of Jharkhand dated 13th March, 2003 can be made only subject to the release and availability of the fund by the State Government. It is submitted that no funds for the said purpose has been released till now by the State Government. It is further submitted that the case of Shri Nikudimus Tuddu is

entirely different from that of Other ad hoc teachers. It is also submitted that he is the only ad hoc teacher, who was appointed by the then Vice-chancellor of the Bhagalpur University, Bhagalpur in 1986 in a legal way as a purely temporary lecturer against sanctioned post of Santhali at Sahebgunj College, Sahebgunj at the payment of minimum basic pay of Rs. 7,00/- per month and therefore, in pursuance to the order passed by the Hon''ble High Court of Jharkhand in C.W.J.C. No. 2132 of 2001. Shri Nikudimus Tuddu was paid the minimum basic pay of Rs. 2200/- per month along with admissible allowances of D.A./ H.R.A. It is submitted that all other ad hoc teachers including the petitioners were appointed by the Principal in violation of sub-clause 3 of Section 35 of the Universities Act and against unsanctioned posts and without following the legal procedure of appointment.

7. The learned counsel for the respondent-University submitted that illegal appointment can not be given legal sanction and in support thereof, the learned counsel for the respondent-University referred to and relied upon the judgment in the case of State of Bihar and Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others,

8. The respondent No. 6 (Principal, A.S. College, Deoghar) also filed counter-affidavit, inter alia, stating that this deponent adopts the counter-affidavit filed on behalf of the respondent-University but in Para 5, it is stated that the petitioners are working as ad hoc lecturer in A.S. College, Deoghar for the last 15 years and are discharging the duties assigned to them. As per the direction of the University, they are being paid the monthly remuneration at the rate of Rs. 700/- per month along with other ad hoc teachers of the College and have been paid the amount up to the month of August, 2003. It is further stated that both the petitioners are working regularly as ad hoc lecturers after they have been reinstated in their services as ad hoc lecturers.

9. The respondent-State also filed counter-affidavit, inter alia, stating that the petitioners are working as ad hoc teachers from 10.10.1989 and are continuing on the said post in obedience of the order of the Hon''ble Supreme Court passed in W.P. Nos. 65, 961 and 982 of 1989 and SLP No. 11078 of 1989. It is further stated that they were allowed to join and work till further orders on the same terms and conditions to which they agreed at the time they were appointed/ engaged for the said teaching work. It is further stated that as per the directive of the Hon''ble Supreme Court all the ad hoc teachers in service on February 10th 1989, were also ordered to be continued till selection is made by the University Service Commission and they shall be paid in terms agreed for the period for which they actually worked and accordingly, they are continuing as ad hoc teachers and paid their salaries in terms of the order, passed by the Hon''ble Supreme Court.

10. The learned counsel for the petitioners submitted in C.W.J.C. No. 3916 of 2000, this Court observed that the respondent-State Government is required to decide the issue relating to formal sanction of posts of the teachers for Science

faculty of A.S. College, Deoghar which was ordered to be determined within a period of four months from the date of receipt/ production of the order. It is submitted that so far as sanction of one or other post is concerned, the matter stands disposed of and decided by the Full Bench of this Court in the case of Braj Kishore Singh and Others Vs. State of Bihar and Others, , wherein, this Court held that the posts in terms with Section 35 required to be sanctioned in terms with Staff pattern, number of posts deemed to be sanctioned. Though, the aforesaid case related to non-teaching employees of a College, but the ratio laid down, therein, can be applied to teaching employees where teaching of a particular subject is imparted but no formal order issued, creating posts for each faculty of which teaching is imparted, the minimum number of teaching posts of subject concerned are to be created and sanctioned. It is submitted that relying upon the observations made by the Full Bench of the Patna High Court, the learned single Judge of this Court rendered judgment in C.W.J.C. No. 3916 of 2000.

11. Considering the aforesaid rival submissions and on perusal of the material available on record, it appears that the petitioners were appointed from time to time either by the Vice-Chancellor of the University or by the Principal of the College. It appears that the petitioners were appointed as ad hoc lecturers in Physics and Botany respectively in A.S. College, Deoghar against unsanctioned posts by the Principal of the College in the year 1988. Thereafter, on 10.04.1989, the petitioner and other ad hoc lecturers were terminated and therefore, they preferred writ petition, before the High Court and the said litigation went up to the Hon''ble Supreme Court. The Hon''ble Supreme Court disposed of the writ petitions and SLP No. 11078 of 1989 with the following directions:-

(i) The University Service Commission shall advertise the posts available for direct recruitment within four months.

(ii) The Government shall consider the workload in each University and sanction such additional posts that may be required. Within the said period such additional posts shall also be filled regularly either by direct recruitment or by promotion as per rules and not by ad hoc appointment.

(iii) The University/Government shall relax the maximum age prescribed for direct recruitment of teachers to the extent of service rendered by persons as ad hoc teachers.

(iv) All the ad hoc teachers in service on February 10, 1989 against sanctioned posts shall continue till selection is made by the University Service Commission and they shall actually worked:

(v) Other ad hoc teachers who have worked till that, day must also be paid.

(vi) The payment shall be made within one month.

12. Thereafter, the said order was modified by the Hon''ble Supreme Court on 15th January, 1990, which reads as under:-

After hearing the counsel for the parties, it seems to us that there is an innocent error in Paragraph (iv) of the Order mentioning that the ad hoc teachers should continue only against Sanctioned posts. The order was meant to benefit all ad hoc teachers as on February 10, 1989. Accordingly, we delete the words "against sanctioned posts" in Clause (iv) of the order.

In the same paragraph, add the word "have" in between they and actually in the last sentence.

13. In view of the aforesaid order passed by the Hon"ble Apex Court, the direction was given to the State to make regular appointment and ad hoc lecturers working as on 10.2.1989 were ordered to be continued, until regular appointments are made. The State Government was also directed to consider the work load in each university and sanction such additional posts that may be required. The University/Government were directed to relax the maximum age prescribed for direct recruitment of ad hoc teachers to the extent of service rendered by the persons as ad hoc teachers. On perusal of the letter addressed by the Principal of A.S. College. Deoghar to the Vice-chancellor of the University (Annexure-A of the affidavit filed on behalf of the respondent Nos. 2, 3 and 4 dated 19.8.2011), indicating list of teachers status wise of A.S. College. Deoghar, it appears that the name of the present petitioners are indicated against Serial Nos. 12 and 15 under the Department of Physics and Botany respectively. On perusal of the same, it also appears that the petitioners are rendering their services from 26.5.1987 and 5.7.1988 on ad hoc basis respectively. This letter indicates that there is requirement of lecturers in each of the Department mentioned therein. The rejoinder affidavit filed by the petitioner and the averments made therein, pertaining to the order passed in C.W.J.C. No. 3916 of 2000, filed by the petitioner and other teachers of A.S. College, Deoghar, but it appears that the contention raised by the University was rejected by making the following observations :-

Counsel for the University initially made objection and tried to distinguish the case on the ground that the petitioners are ad hoc lecturers of such subjects which have not yet been granted affiliation by the State.

In the counter-affidavit filed by the respondents, plea taken that the petitioner Nos. 1 to 11 are teachers of Science whereas petitioners No. 12 to 16 are teachers of Arts and Commerce of A.S. College, Deoghar, while it has not been disputed that the college in question is a constituent college of University, mere statement has been made that the affiliation of science subject has not yet been granted and the posts in the subject concerned for the college has not been sanctioned. However, the counsel for the University failed to point out the provisions made for grant of affiliation for a particular subject, in respect of constituent College of the University. In the circumstances, such plea cannot be accepted, particularly when the teaching upto B.Sc. (Hons.) standard is being imparted in the College since 1989 and the result of successful candidates are also being published by the University.

So far as sanction of one or other post is concerned, the matter stands decided by the decision of the Full Bench of this Court in the case of Braj Kishore Singh and Others Vs. State of Bihar and Others, . Therein, this Court while held that the posts in terms with Section 35 require to be sanctioned, in terms with staffing pattern, the number of posts deemed to be sanctioned. Though the aforesaid case relates to non-teaching employees of a college but the ratio laid down therein can be applied to teaching employees where teaching of a particular subject is imparted but no formal order issued creating a post. For each faculty of which teaching is imparted the minimum number of teaching posts of subject concerned are to be created to be sanctioned.

This apart, I find that the University has already made requisition to the state for sanction of posts, on which formal order to be passed by the State.

In the circumstances, the State of Bihar, through Secretary, Higher Education is required to decide the issue relating to formal sanction of such number of teaching posts for Science faculty of A.S. College, which is to be determined within a period of four months from the date of receipt/production of a copy of this order.

14. It also appears that from time to time, the Principal of the College requested the University for sanction of fund on the basis of the claim statement.

15. On perusal of the order passed by the Hon''ble Apex Court, it appears that the State Government was directed to consider the work load in each University and sanction such additional posts that may be required and such additional posts shall also be filled up regularly either by direct recruitment or by promotion as per the Rules. The University and the State Government were also directed to relax the maximum age prescribed for direct recruitment of teachers to the extent of service rendered by persons as ad hoc teachers and all the ad hoc teachers in service as on February, 10, 1989, were ordered to be continued, till selection is made by the University Service Commission. Therefore, in the light of the order passed by the Hon''ble Apex Court, the State Government and the University were required to act upon and on the basis of the work load in each university, the additional posts were required to be sanctioned by the State Government and thereafter, the recruitment process was required to be undertaken in accordance with Rules and while making such appointments, the ad hoc lecturers were also required to be given relaxation in age. It also appears that all the ad hoc teachers in service on February, 10, 1989, were ordered to be continued till regular selection is made by the University Service Commission. The Supreme Court also passed an order that other ad hoc teachers, who have worked till that day, must also be paid. Thus, in the light of the order passed by the Hon''ble Apex Court, the respondents-authorities were required to undertake the exercise for creation of additional posts and the process of regular recruitment and till then, the ad hoc lecturers were required to be continued. It appears that the present petitioners are allowed to be continued on the same pay-scale, whereas, the other lecturers are getting and enjoying the regular pay-

scale including the revised pay-scale, whereas, the scale of the petitioners, who are working on ad hoc basis, has not been revised from time to time and they are getting the old pay-scale prevailing at the time of their appointment. Therefore, there is a feeling of discrimination prevailing in the mind of the petitioners and rightly so, because the nature of work performed by them in the capacity of ad hoc lecturer and the nature of work performed by regular lecturer in a particular department of College/University appears to be similar. The respondents have tried to justify their stand by stating that there is no discriminatory treatment given by them and the case of Shri Nikudimus Tuddu stands on a different footing than the petitioners as the appointment of Shri Nikudimus Tuddu was done by the Principal against the sanctioned post of the Bhagalpur College/University. I found substance in the arguments advanced by the learned counsel for the petitioners in the light of the judgment rendered by the Hon'ble Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , as a one time measure, the cases of the petitioners requires to be considered for regularization by the respondents-authorities. The Hon'ble Apex Court even at the time of passing an order while disposing of the SLP No. 11078 of 1989, allowed to continue them on ad hoc basis, till the regular recruitment takes place and the university as well as the State Government was directed to provide relaxation in age and thereby give chance to the ad hoc lecturers. Thus, the experience of the lecturers who have rendered service as ad hoc lecturers since 1988-89 is required to be taken into account and considered and their service is required to be regularized by the respondents and thereby, they should be given a benefit of equal salary as it has been enjoyed by other regularly appointed lecturers. Their initial appointment was done in the year 1988-89 by the Principal of the College, looking to the requirement prevailing at the relevant point of time and it appears that the said requirement continued till today and the respondent-State Government has not sanctioned the additional posts, considering the work load and therefore, the cases of the present petitioners are required to be considered by the respondents-authorities in the light of the judgment given by the Hon'ble Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and the said judgment has been followed in another decision of the Hon'ble Apex Court in the case of State of Karnataka and Others Vs. M.L. Kesari and Others, wherein, at para 53 of the said judgment, Uma Devi's case has been referred.

16. I have also perused the judgment referred to and relied upon by the learned counsel for the respondent-University in the case of State of Bihar & Others v. Bihar Rajya M.S.E.S.K.K. Mahasangh & Others, reported in 2005 (2) J.C.R. 126 (SC). In para 71 of the said judgment, it is observed as under :-

71. In view of this judgment and the directions made herein to the University to take a final decision based on the report of the enquiry commission, all the applications for impleadment as parties and objections filed to the enquiry report are rejected. It is for the University to take a final decision concerning the individual employees. For the same reason, no further orders are required on the

interlocutory applications seeking certain directions pending the appeal and for modification of earlier orders made. Other interlocutory applications also need no further directions or orders. They all stand disposed of.

The observations and directions of the said judgment is also required to be considered by the respondent-authority while considering the case of the petitioners for regularization.

17. It also appears that Division Bench of this Court has also delivered judgment in L.P.A. No. 133 of 2008 in the case of Chadra Tirkey v. State of Jharkhand & Others, reported in 2010 (3) JLJR 192, wherein the Court has considered the length of service coupled with other trappings of a regular employment, then the employee cannot be denied the benefit of the services of a regular employee so as to face termination as that would be against the ratio and observation given out in Uma Devi's case. The ratio laid down by this Court in the said judgment is also applicable in the present case.

18. It also appears that in the year 2010, the respondents have regularized some of the teachers, considering their experience, length of service as ad hoc teacher. It also appears that Justice Agarwal Commission has been constituted for the purpose of considering the cases of such ad hoc teachers and as per the recommendation made by Justice Agarwal Committee, many such lecturers' services have been regularized. It also appears that 51 lecturers' case was considered by the respondent-university as well as by the State authorities and their services have been regularized and they have been absorbed as a regular lecturers.

19. Therefore, in the light of the aforesaid backgrounds, the case of the present petitioners who are rendering services as ad hoc lecturers since 1988-89, deserves to be considered by the respondents-authorities and therefore, this Court is of the view that this petition is required to be disposed of by giving suitable direction to the respondents-authorities. Accordingly, the petitioners are directed to submit a detailed representation/justifying their claim before the Vice-chancellor of the University-authorities, through the Principal of the College, who in turn, shall forward it to the State Government for its consideration along with its views/recommendation after careful consideration of the facts and circumstances and various orders passed by the University for regularization of services. Upon receipt of the representation by the State Government, the respondents-State authorities shall consider the same in the light of the judgment rendered by the Hon'ble Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , which is subsequently followed in the case of State of Karnataka and Others Vs. M.L. Kesari and Others, and the Division Bench judgment of this Court in L.P.A. No. 133 of 2008 in the case of Chadra Tirkey v. State of Jharkhand & Others, reported in 2010 (3) JLJR 192 as also in view of the fact that 51 such ad hoc lecturers have been regularized by the State Government. The State Government may also consider the total length of service and experience rendered by the petitioner as ad hoc lecturers while

deciding the representation. The respondent-State Government shall also take into account the requirement of continuation of present petitioners on the basis of work load and shall consider the cases of the present petitioners in the light of the administrative exigencies of the College and University for continuation of the present petitioners who are rendering their services in the College since last more than 24 years. The respondent-authority shall afford an opportunity of personal hearing to the petitioners before taking any final decision in the matter. The final decision that may be taken in the matter, be communicated to the petitioners. With the aforesaid observations and directions, this writ petition stands disposed of.

Further Order After pronouncement of the above judgment and order, the learned counsel for the petitioners requested that the respondents may also be directed to consider the cases of other similarly situated persons.

In view of the State Litigation Policy, the respondent-State is at liberty to consider the cases of other similarly situated persons while considering the case of the petitioners, so that unnecessary litigation can be curtailed and the cases of other similarly situated persons can also be considered and decided by the State when the cases of petitioners, having similar issue is considered by the respondent-State. The submission made by the learned counsel for the petitioners is required to be considered in the light of the Litigation Policy, formulated by the State, which is known as "State Litigation Policy". The State should make endeavour to curtail the unnecessary litigation.