

(2013) 03 PAT CK 0096

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.10032 of 2009

Dr. Dharam Sheela Prasad

APPELLANT

Vs

The Chancellor of University

RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Citation : (2013) 2 BBCJ 578

Hon'ble Judges : Ajay Kumar Tripathi, J.

Bench : Single Bench

Advocate : In CWJC No.10032 of 2009; Mr. Sujeet Kumar Sinha, Advocate, for the Petitioner; Mr. (Gp18) Mr. Shivendra Kishore, Mr. Ajay Kumar Sinha and Mr. Abhinav Shrivastava, Advocates, for the Respondent; In CWJC No.3610 of 2008; Mr. Rajeev Kumar Singh, Mr. Niranjana Kumar and Mr. Nawal Kishore Singh, Advocates, for the Petitioner; Mr. (Sc14) and Mr. Yugal Kishore, Advocate, for the Respondent; In CWJC No.19296 of 2010; Mr. Dharmendra Kr.Paswan, Advocate, for the Petitioner; Mr. (Gp16), for the Respondent; In CWJC No.20788 of 2010; Mr. Dharmendra Kumar Paswan, Advocate, for the Petitioner; Mr. Anil Kumar Jha Ga2, for the Respondent; In CWJC No.2196 of 2011; Mr. Kumar Devashish, Advocate, for the Petitioner; Mr. Ravindra Kr Choubey Sc8, for the Respondent; In CWJC No.19319 of 2010; Mr. Satish Chandra Jha, Advocate, for the Petitioner; Mr. (Gp20), for the Respondent; In CWJC No.7798 of 2011; Mr. Janardan Prasad Singh, Advocate, for the Petitioner; Mr. S.A. Alam SC3, for the Respondent; In CWJC No.11197 of 2012; Mr. Satish Chandra Jha, Advocate, for the Petitioner; Mr. Ajay Behari Sinha, Advocate, for the Respondent; In CWJC No.15574 of 2010; Mr. Siddhartha Prasad, Advocate, for the Petitioner; Mr. (Ga5), for the Respondent; In CWJC No.17339 of 2010; Mr. Abhinav Shrivastava, Advocate, for the Petitioner; Mr. (Ga9), for the Respondent; In CWJC No.10862 of 2010; Mr. Pramod Mishra, Mr. Vijay Kumar "Mukul" and Mr. Jyoti Prabhakar, Advocates, for the Petitioner; Mr. (Sc3), Mr. Shivendra Kishore and Mr. Ashok Kumar Keshari, Advocates, for the Respondent; In CWJC No.15425 of 2009; Mr. Shubhesh Pandey, Advocate, for the Petitioner; Mr. (Sc19), Mr. P.N.Shahi and Mr. Partha Sarthy, Advocates, for the Respondent; In CWJC No.14596 of 2010; Mr. Shashi Bhushan Singh, Advocate, for the Petitioner; Mr. (Gp17), for the Respondent; In CWJC No.14974 of 2010; Mr. Subodh Kumar Jha, Advocate, for the Petitioner; Mr. (Sc17), for the Respondent; In CWJC No.15137 of 2010; Mr. Anju Jha, Advocate, for the Petitioner; Mr. (Ga4), for the Respondent; In CWJC No.15333 of 2010; Mr. Manoj Kumar Manoj, Advocate, for the Petitioner; Mr. (Ga7), for the Respondent; In CWJC No.15398 of 2010; Mr. Shashi Bhushan Singh, Advocate,

for the Petitioner; Mr. (Gp13), for the Respondent; In CWJC No.15590 of 2010; Mr. Purushottam Kr.Jha, Advocate, for the Petitioner; Mr. (Ga8), for the Respondent; In CWJC No.15620 of 2010; Mr. Virendra Prasad, Advocate, for the Petitioner; Mr. (Ga4), for the Respondent; In CWJC No.15661 of 2010; Mr. Purushottam Kr.Jha, Advocate, for the Petitioner; Mr. (Gp14), for the Respondent; In CWJC No.15662 of 2010; Mr. Abhinav Shrivastava, Advocate, for the Petitioner; Mr. (Ga2), for the Respondent; In CWJC No.15911 of 2010; Mr. Pramod Mishra, Advocate, for the Petitioner; Mr. (Gp21), for the Respondent; In CWJC No.15929 of 2010; Mr. Virendra Prasad, Advocate, for the Petitioner; Mr. (Gp18), for the Respondent; In CWJC No.16052 of 2010; Mr. Subodh Kumar Jha, Advocate, for the Petitioner; Mr. (Gp19), for the Respondent; In CWJC No.16138 of 2010; Mr. Shivendra Kishore, Advocate, for the Petitioner; Mr. (Sc10), for the Respondent; In CWJC No.16281 of 2010; Mr. Anju Jha, Advocate, for the Petitioner; Mr. (Sc5), for the Respondent; In CWJC No.16389 of 2010; Mr. Purushottam Kr.Jha, Advocate, for the Petitioner; Mr. (Sc23), for the Respondent; In CWJC No.16551 of 2010; Mr. S.B.K.Manglam, Advocate, for the Petitioner; Mr. (Sc22), for the Respondent; In CWJC No.16650 of 2010; Mr. S.B.K.Mangalam, Advocate, for the Petitioner; Mr. (Gp7), for the Respondent; In CWJC No.16773 of 2010; Mr. S.B.K.Manglam, Advocate, for the Petitioner; Mr. (Sc21), for the Respondent; In CWJC No.12627 of 2010; Mr. Manoj Kumar Manoj, Advocate, for the Petitioner; Mr. (Gp10), for the Respondent; In CWJC No.13018 of 2010; Mr. Ram Sagar Singh, Advocate, for the Petitioner; Mr. (Sc17), for the Respondent; In CWJC No.12997 of 2010; Mr. Sunil Kumar Singh, Advocate, for the Petitioner; Mr. (Gp10), for the Respondent; In CWJC No.13041 of 2010; Mr. Manoj Kumar Manoj, Advocate, for the Petitioner; Mr. (Gp11), for the Respondent; In CWJC No.13071 of 2010; Mr. Raghav Prasad-1, Advocate, for the Petitioner; Mr. (Gp13), for the Respondent; In CWJC No.13242 of 2010; Mr. Raghav Prasad-1, Advocate, for the Petitioner; Mr. (Ga8), for the Respondent; In CWJC No.13293 of 2010; Mr. Sunil Kumar Singh, Advocate, for the Petitioner; Mr. (Sc14), for the Respondent; In CWJC No.13382 of 2010; Mr. Raghav Prasad-1, Advocate, for the Petitioner; Mr. (Aag5), for the Respondent; In CWJC No.13552 of 2010; Mr. Prabhakar Kumar, Advocate, for the Petitioner; Mr. (Sc4), for the Respondent; In CWJC No.13687 of 2010; Mr. Prabhakar Kumar, Advocate, for the Petitioner; Mr. (Ga5), for the Respondent; In CWJC No.13716 of 2010; Mr. Ambrish Kr.Jha, Advocate, for the Petitioner; Mr. (Gp22), for the Respondent; In CWJC No.13834 of 2010; Mr. Abhinav Shrivastava, Advocate, for the Petitioner; Mr. (Gp3), for the Respondent; In CWJC No.13841 of 2010; Mr. Raghav Prasad-1, Advocate, for the Petitioner; Mr. (Ga1), for the Respondent; In CWJC No.14118 of 2010; Mr. Chakradhari Sharan Singh, Advocate, for the Petitioner; Mr. (Sc24), for the Respondent; In CWJC No.14189 of 2010; Mr. Shashi Bhushan Singh, Advocate, for the Petitioner; Mr. (Aag10), for the Respondent; In CWJC No.14243 of 2010; Mr. Raghav Prasad 1, Advocate, for the Petitioner; Mr. (Gp22), for the Respondent; In CWJC No.14260 of 2010; Mr. Shekhar Singh, Advocate, for the Petitioner; Mr. (Sc2), for the Respondent; In CWJC No.14296 of 2010; Mr. Raghav Prasad-1, Advocate, for the Petitioner; Mr. (Aag11), for the Respondent; In CWJC No.14352 of 2010; Mr. Raghav Prasad 1, Advocate, for the Petitioner; Mr. (Sc1), for the Respondent; In CWJC No.14381 of 2010; Mr. Raghav Prasad-1, Advocate, for the Petitioner; Mr. (Ga4), for the Respondent; In CWJC No.14396 of 2010; Mr. Raghav Prasad I, Advocate, for the Petitioner; Mr. (Sc2), for the Respondent; In CWJC No.17194 of 2010; Mr. Hemant Kumar Jha, Advocate, for the Petitioner; Mr. (Aag11), for the Respondent; In CWJC No.10844 of 2010; Mr. Manoj Kumar Manoj, Advocate, for the Petitioner; Mr. (Gp1, Mr. Shivendra Kishore and Mr. A.B.Sinha, Advocate, for the Respondent; In CWJC No.12900 of

2010; Mr. Purushottam Kr.Jha, Advocate, for the Petitioner; Mr. (Ga3), for the Respondent; In CWJC No.17603 of 2010; Mr. Abhinav Shrivastava, Advocate, for the Petitioner; Mr. (Gp22), for the Respondent; In CWJC No.16910 of 2010; Mr. Dinesh Kumar, Advocate, for the Petitioner; Mr. (Sc14), for the Respondent; In CWJC No.17535 of 2010; Mr. S.B.K.Manglam, Advocate, for the Petitioner; Mr. (Sc18), for the Respondent; In CWJC No.17538 of 2010; Mr. Uma Shankar, Advocate, for the Petitioner; Mr. (Gp2), for the Respondent; In CWJC No.17627 of 2010; Mr. Pramod Mishra, Advocate, for the Petitioner; Mr. (Gp9), for the Respondent; In CWJC No.17776 of 2010; Mr. Pramod Mishra, Advocate, for the Petitioner; Mr. (Sc14), for the Respondent; In CWJC No.17840 of 2010; Mr. Subodh Kumar, Advocate, for the Petitioner; Mr. Hemendra Pd.Singh, Advocate, for the Respondent; In CWJC No.17960 of 2010; Mr. S.B. K. Mangalam, Advocate, for the Petitioner; Mr. (Sc12), for the Respondent; In CWJC No.17584 of 2010; Mr. Purushottam Kumar Jha, Advocate, for the Petitioner; Mr. (Ga7), for the Respondent; In CWJC No.863 of 2011; Mr. Sanjeet Kumar, Advocate, for the Petitioner; Mr. Dhurjati Kr Prasad Gp7, for the Respondent; In CWJC No.1367 of 2011; Mr. Subodh Kumar Jha, Advocate, for the Petitioner; Mr. Girija Shankar Pd Gp1, for the Respondent; In CWJC No.1730 of 2011; Mr. Abhinav Srivastava, Advocate, for the Petitioner; Mr. Rajesh Singh Gp16, for the Respondent; In CWJC No.1533 of 2012; Mr. Purushottam Kumar Jha, Advocate, for the Petitioner; Mr. Prabhakar Tekriwal Ga1, for the Respondent; In CWJC No.13021 of 2009; Mr. Shivendra Kishore, Advocate, for the Petitioner; Mr. (Gp10) and Mr. Pushkar Narain Shahi, Advocates, for the Respondent; In CWJC No.227 of 2011; Mr. Abhinav Srivastava, Advocate, for the Petitioner; Mr. Kaushal Kr. Jha Sc4, for the Respondent; In CWJC No.299 of 2011; Mr. Abhinav Srivastava, Advocate, for the Petitioner; Mr. Tej Bahadur Singh Aag7, for the Respondent; In CWJC No.20310 of 2010; Mr. Abhinav Srivastava, Advocate, for the Petitioner; Mr. S.K. Ghosh Aag2, for the Respondent; In CWJC No.292 of 2011; Mr. Abhinav Srivastava, Advocate, for the Petitioner; Mr. S.K.Ghose Aag2, for the Respondent; In MJC No.467 of 2011; Mr. Akhilesh Kumar Sinha, Advocates, for the Petitioner; Mr. Namrta Mishra Gp17, for the Respondent; In MJC No.4479 of 2011; Mr. Virendra Prasad, Advocate, for the Petitioner; Mr. Manoj Kr. Ambasta Gp14, for the Respondent; In MJC No.4730 of 2011; Mr. Virendra Prasad, Advocate, for the Petitioner; Mr. Manoj Kr. Ambasta Gp14. <BR, for the Respondent; >In CWJC No.16064 of 2009; Mr. Virendra Prasad, Advocate, for the Petitioner; Mr. (Gp17), Mr. R.K. Giri and Mr. Jai Shankar Barnawal, Advocates, for the Respondent; In CWJC No.13050 of 2010; Mr. Pramod Mishra, Advocate, for the Petitioner; Mr. (Sc7), for the Respondent; In CWJC No.13430 of 2010; Mr. Purushottam Kr.Jha, Advocate, for the Petitioner; Mr. (Sc7), for the Respondent; In CWJC No.20484 of 2010; Mr. Binod Kumar Sinha, Advocate, for the Petitioner; Mr. Shyam Kishore Sharma Ga5, for the Respondent; In CWJC No.634 of 2011; Mr. Subodh Kumar Jha, Advocate, for the Petitioner; Mr. G.K. Agrwal Ga10, for the Respondent; In CWJC No.19240 of 2010; Mr. Akhilesh Kumar Sinha, Advocate, for the Petitioner; Mr. (Gp17), for the Respondent; In CWJC No.20421 of 2010; Mr. Abhinav Srivastava, Advocate, for the Petitioner; Mr. Anil Kumar Gp11, for the Respondent; In CWJC No.20667 of 2010; Mr. Abhinav Srivastava, Advocate, for the Petitioner; Mr. Roy Shivaji Nath Aag4, for the Respondent; In CWJC No.16689 of 2010; Mr. Purushottam Kr.Jha, Advocate, for the Petitioner; Mr. (Gp6), for the Respondent; In CWJC No.14195 of 2010; Mr. Purushottam Kr.Jha, Advocate, for the Petitioner; Mr. (Aag7), for the Respondent; In CWJC No.18073 of 2010; Mr. Shashi Bhushan Singh, Advocate, for the Petitioner; Mr. (Ga9), for the Respondent; In CWJC No.16027 of 2012; Mr. Virendra Prasad, Advocate, for the Petitioner; Mr. S.A. Alam Sc3, for the Respondent; In CWJC

No.15940 of 2009; Mr. Sujeet Kumar Sinha, Mr. Indu Bhushan Pandey, Mr. Manoj Kumar and Mr. Mukesh Kumar Sinha, Advocates, for the Petitioner; Mr. Shivendra Kishore and Mr. Hemendra Kr.Singh, Advocates, for the Respondent; In CWJC No.10705 of 2009; Mr. Shailendra Kumar Sinha, Advocate, for the Petitioner; Mr. (Gp7), Mr. S.Iqbal Ahmad, Mr. Shivendra Kishore, Mr. Sanjay Pandey, Mr. Kumar Brajendra Nath and Mr. Subodh Chandra Jha, Advocates, for the Respondent; In CWJC No.4970 of 2007; Mr. Santosh Kumar Sinha, 2 Mr. Arvind Prasad Singh, Mr. Naresh Prasad, Mr. Rabindra Kumar, Mr. Suresh Singh and Mr. Dr.Vidya Nand Kumar, Advocates, for the Petitioner; Mr. (Sc20) and Mr. Y.Kishore , Advocates, for the Respondent; In CWJC No.9190 of 2010; Mr. Mukundjee and Mr. Ritendra Bhushan Awasthee, Advocates, for the Petitioner; Mr. (Gp2), Mr. Shivendra Kishore and Mr. Ajay Behari Sinha, Advocates, for the Respondent; In CWJC No.11307 of 2010; Mr. Mukul Sinha, Advocate, for the Petitioner; Mr. (Ga7), for the Respondent; In CWJC No.2231 of 2010; Mr. Shashi Bhushan Singh and Mr. Krishna Murari Pd, Advocates, for the Petitioner; Mr. (Aag4), Mr. Pushkar Narain Shahi and Mr. Partha Sarthy, Advocates, for the Respondent; In CWJC No.10988 of 2010; Mr. Saket Tiwary, Advocate, for the Petitioner; Mr. (Sc19) and Mr. Pushkar Narain Shahi, Advocate, for the Respondent; In CWJC No.12197 of 2010; Mr. Kamlesh Kumar Sharma, Advocate, for the Petitioner; Mr. (Gp15), for the Respondent; In CWJC No.12233 of 2010; Mr. Birendra Narayan Sharma, Advocate, for the Petitioner; Mr. (Gp14), for the Respondent; In CWJC No.12410 of 2010; Mr. Virendra Prasad, Advocate, for the Petitioner; Mr. (Ga3), for the Respondent; In CWJC No.12452 of 2010; Mr. Birendra Narayan Sharma, Advocate, for the Petitioner; Mr. (Gp13), for the Respondent; In CWJC No.12522 of 2010; Mr. Kumar Ravish, Advocate, for the Petitioner; Mr. Ashok Kumar Keshari, Advocate, for the Respondent; In CWJC No.14506 of 2010; Mr. Shashi Bhushan Singh, Advocate, for the Petitioner; Mr. (Ga5), for the Respondent; In CWJC No.16713 of 2010; Mr. Devendra Pd.Singh, Advocate, for the Petitioner; Mr. Anil Singh, Advocate, for the Respondent; In CWJC No.7601 of 2009; Mr. Baidya Nath Thakur and Mr. Shankar Kumar Thakur, Advocates, for the Petitioner; Mr. (Gp5), Mr. T.N.Maitin and Mr. Pushkar Narain Shahi, Advocates, for the Respondent; In CWJC No.10959 of 2009; Mr. Subhash Chandra Jha, Advocate, for the Petitioner; Mr. Pushkar Narain Shahi, Mr. Nivedita Nirvikar and Mr. (Sc3), Advocates, for the Respondent; In CWJC No.4890 of 2010; Mr. Prabhakar Kumar, Advocate, for the Petitioner; Mr. (Ga7) and Mr. Ashok Kumar Keshari, Advocates, for the Respondent; In CWJC No.12613 of 2010; Mr. Amit Prakash, Advocate, for the Petitioner; Mr. (Sc20), for the Respondent; In CWJC No.12312 of 2010; Mr. Raghav Prasad 1, Advocate, for the Petitioner; Mr. (Sc5), for the Respondent; In CWJC No.11901 of 2010; Mr. Binodanand Mishra, Advocate, for the Petitioner; Mr. (Aag8), for the Respondent; In CWJC No.13342 of 2009; Mr. Virendra Prasad, Advocate, for the Petitioner; Mr. (Aag4) Mr. R.K.Giri, Mr. Vinay Kirti Singh, Mr. Jai Shankar Barnawal and Mr. Arun Kumar, Advocates, for the Respondent; In CWJC No.16081 of 2009; Mr. Sujeet Kumar Sinha, Mr. Indu Bhushan Pandey, Mr. Manoj Kumar and Mr. Mukesh Kumar Sinha, Advocates, for the Petitioner; Mr. Shivendra Kishore and Mr. H.P.Singh, Advocates, for the Respondent; In CWJC No.16298 of 2009; Mr. Sujeet Kumar Sinha, Mr. Indu Bhushan Pandey, Mr. Manoj Kumar and Mr. Mukesh Kumar Sinha, Advocates, for the Petitioner; Mr. Shivendra Kishore and Mr. Hemendra Pd.Singh, Advocates, for the Respondent; In CWJC No.16999 of 2009; Mr. Satish Chandra Jha, Mr. Pushpa Rani and Mr. Kumar Ravi Shankar, Advocates, for the Petitioner; Mr. (Aag5), for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Ajay Kumar Tripathi, J. (Oral)—A series of writ applications came to be filed before this Court, when the university authorities issued them notice to submit clarification/statement with supporting documents as to why their dates of promotion as Readers/Professors be not corrected to yet another date. Though notices issued by various universities across the State of Bihar may be in different form and content, but the sum essence of the notice broadly falls within the parameter indicated above.

2. The purported reason for issuance of such notice to hundreds of such teachers working in various universities across the State of Bihar is said to be based on a judgment and direction rendered by the High Court in C.W.J.C. No. 5859 of 1996, dated 21.02.2000, reported in 2000 (2) PLJR 867 and the subsequent order passed in appeal in L.P.A. No. 1495 of 2001, wherein a direction was issued for determining qualifying period of service for the purposes of benefit of increment and promotion. There is afirmance of the above decisions by the Apex Court as well.

3. Reference has been made to paragraph 40, 41, 48 and 48 (A) of the Learned Single Judge's Order, dated 21.02.2000, as well as a follow up direction issued from the office of the Hon"ble Chancellor, dated 08.06.2009 in the notices, which is the backdrop to issuance of notice.

4. It will be relevant to reproduce those paragraphs of the High Court's Order for ready reference, which reads as under:

"40. But from the third interim report of the Committee, it appears that in course of preparation of the budget it came to light that a number of teachers whose services were absorbed under the three Absorption Statutes cannot be said to be legally and validly in service on the dates on which their services were regularized under the Absorption Statutes. It is pointed out that though for the purposes of absorption their case might have been covered by the provisions of the absorption statutes, it could not be said that on the date of their absorption their continuance in service was legal and valid in terms of the provisions of Sections 57 and 58 of the Bihar State Universities Act.

41. After making an elaborate discussion on the issue the Committee has arrived at conclusions which are stated in paragraphs 5 to 9 of Annexure XI of the third interim report which are as follows:

"5 Those teachers who had been appointed in a regular manner after following prescribed procedure and had not been absorbed on substantive basis, shall on observation under one of the three Statutes mentioned above would be entitled for counting their services from the date of their first appointment as a temporary teacher, both for the purpose of calculation of their entitlement as also for merit or time-bound-promotion."

"6. Those teachers who were not holding any post in the regular manner on the date of their absorption but had been factually absorbed under one or three statutes would be entitled to count their services for the above two purposes from the following date:

(a) absorption under the first Statute ? 30.06.77 (being the date of issuance of Statutes)

(b) absorbed under the Second Statute ? 1.1.81 (being the date of issuance of Statutes)(c) absorbed under the third Statute ? 28.02.82 (being the date of issuance of Statute."

"7. In some cases wrong date of absorption has been given by the University/ Commission. In such cases correct date, according to the discussion, as made above, has been given for calculation of the entitlement and promotion."

"8. For the purpose of determining the eligibility of teachers for time bound or merit promotion to the post of Teacher/Professors correct date according to law has been taken into consideration. After determining the correct date, calculation has been made on the basis of those dates for the reasons as explained earlier."

"9. In some cases the University or the Commission has revised the date or promotion, after having fixed a later date earlier, for reasons explained wrong shifting of date has not been taken into consideration."48. In the facts and circumstances of this case, this court is prima facie satisfied that it would be unreasonable and unfair to burden the State Government with the additional financial liability resulting from giving the benefit of past service to such of the teachers who were not holding any post in a regular manner at the time of their absorption. The Committee is accordingly advised to proceed with the preparation of budget on the lines indicated by it in paragraphs 5 to 9 of Annexure- XI of its third interim report (emphasis mine).

48.A. However, in all such cases where, in the preparation of budget, the dates of promotion to the next higher post gets altered on account of denial of the benefit of past service, the University shall make a report without any delay to the concerned authority, making a request to re-determine the correct and lawful date of promotion of the affected teacher in the light of the relevant provisions of the Acts and the Statutes. It will also be open to the affected teacher to approach the concerned authority(ies) directly and make a request for redetermination of the date(s) of his promotion(s). On such a report/request being made the concerned authority(ies) will re-consider the matter in the light of the Committee's report and the State's objections and take a fresh decision within three months from the date of receipt of the report / request submitted by the University. Any party, be it the concerned individual or the State, in case aggrieved by the fresh determination of the correct date(s) of promotion(s) will be entitled to take recourse to legal remedies. The date(s) so determined will be reflected in the future budgets of the University."

Re. Colleges made constituent in the fourth phase."

5. Besides the observation of the Court in the above Writ Application, Court is also constrained to take into consideration yet another Order passed in the case of Dr. Kishore Kumar v. State of Bihar, reported in 2001 (4) PLJR 776 and certain observations made by the Learned Single Judge in the above case. The relevant paragraphs which is required to be noticed and are reproduced below are paragraphs 43, 44, 45, 46, 47, 56, 57 and 58:

"43. Further, without commenting upon the merits of the case of the individual petitioners, this court would wish to divert for a moment and to put on record some of the strange cases that have come to its notice only recently.

44. In one case a "lecturer? was appointed on part time basis on a monthly stipend of Rs. 100 till the summer vacation in that year. Seven years later she was regularly appointed on the basis of the recommendations by the University Selection Committee. But for computing the qualifying period for her promotion as Reader, she was also given the benefit of the previous seven years of service as part time lecturer on monthly stipend of Rs. 100/- (See C.W.J.C. No. 8549 of 2001).

45. In another case an appointment was made as lecturer against a post which was not sanctioned and even before the candidate had passed the master's examination. Even after the college became constituent, he could not be paid any salary as the post was not sanctioned. That person was not alone in this predicament and it appears that there were a large number of such persons working in colleges made constituent but against posts which were not sanctioned. The University then found the way to transfer such lecturers to other colleges where sanctioned posts were vacant. So, an arrangement was made for payment of salary to those teachers. They were similarly granted the benefit of previous service for promotion as Readers and Professors (C.W.J.C. No. 8594 of 1991, date of disposal 10.08.2001).

Such illustrations can be multiplied.

46. These illustrations were given only to emphasize that the action of the University in assigning the date of initial appointment as the date of entry into service cannot be conclusive unless a legal sanction for such action can be found and shown to the court.

47. Now in the regularization statutes, there is no sanction for such a course of action. The statutes take into account the previous service for two purpose only, expressly stated in the statues, namely, for grant of annual increments and for protection of inter se seniority.

56. To say that the concerned teacher will not get the benefit of previous service which was bad, invalid and illegal is one thing but to say that the concerned teacher, in case he was not lawfully holding the post of lecturer on the date of his absorption would lose the benefit of his previous service entirely is something

quite different. The State Government has fixed the dates of entry into service on the basis of the second proposition but to my mind it would be more fair, just and equitable to fix the dates of entry into service on the basis of the first proposition.

57. I would therefore, hold and direct that in case a teacher was holding the post of lecturer validly and legally on the date of his absorption, he would be entitled to the benefit of the entire previous service. On the other hand, if a lecturer was not holding the post of lecturer lawfully and validly on the date of his absorption, he would be entitled to the benefit of previous service only to the extent his previous service was in accordance with law. The State Government and the University will accordingly reconsider the review the cases of the petitioners and extend to them, in so far as permissible, the benefit of the previous service to the extent it was held lawfully and validly.

58. Before parting with this case, I would like to observe that this court is not unconscious that as a result of this judgment the petitioners may be placed in a lower scale of pay and they may feel unkindly dealt with by this judgment in these hard times. But it is often said that hard cases make bad laws and this court has come to believe that gross irregularities in absorption / promotions (as illustrated by the two examples given in this judgment) and the financial anarchy prevailing in the Universities in this State go hand in hand. The non-payment of salary to the University employees in time, the non-settlement of their retiral dues, the non-deposit of the provident fund contributions, though deducted from the salary of the University employees and the kind of irregularities in the absorption and promotions etc., as noticed in this case are only the two sides of the same malaise and are connected with each other on a cause and effect basis and unless such hard decisions are taken, it will be impossible to restore the financial and academic health of the Universities in this State. Any leniency which is not strictly sanctioned by law will be quite mis-placed and at this stage will only lead to further deterioration in the field of higher education in this State. (emphasis mine)."

6. The Court has quoted the above paragraphs of both the decisions to give the background under which notices have come to be issued to various teachers, who are either before this Court, or may be even contemplating, approaching the Court. Since the number of such persons is quite large and there are varied factual aspects which have been pleaded in the various Writ Applications, from case to case, as well as from university to university, as urged at the bar, the Court reached a broad consensus after hearing various counsels to the dispute that some kind of deliberation and exercise individually would be required to be made, by an independent authority which will neither be under the hands of the Government nor the University Authorities.

7. One thing is made clear that the notices cannot be wished away at the threshold. The directions issued by the Learned Single Judge, upheld by Division Bench as well as by the Hon"ble Apex Court cannot remain in limbo and has to

be honored and the exercise suggested would be required to be carried out.

8. Looking at the reservation expressed by the counsels with regard to university authorities as of the State Government being saddled with the responsibility, the Court was willing to request a former Judge of this Court as well as retired Chief Justice of Jammu and Kashmir as well as Rajasthan High Court, Justice S. N. Jha, to take on the responsibility of examining each and every case of such teachers on whom notices of such kind have been issued, for determining the qualifying period of service for the purpose of benefit of increment and promotion to the various posts.

9. Since it will be some pains taking effort, which will be required to be made after hearing one and all to the dispute, a broad consensus was reached to refer the matter to Hon"ble Mr. Justice S. N. Jha (retired).

10. The term of reference of Justice Jha would be for determining the qualifying period of service of each and every teacher on whom notices have been served or action taken in furtherance to the observation of the High Court in the earlier Orders. It is made clear that no deliberation and exercise would be required to be made on the correctness or otherwise of the appointment or entry into service at the thresh-hold though it will have relevance to the above determination and exercise. The issue of validity of appointments cannot be racked up now after more than two to three decades and there is an inherent presumption with regard to their continuance, taking into consideration the long span of service rendered by them. Justice Jha, however, would be obliged to give a hearing to the petitioners/teachers or their counsels and the university and the State Authorities are also free to assist Justice Jha in resolving an issue which has been pending for many many years due to protracted litigation. The Court leaves it to Justice Jha to make appropriate request or direction for the kind of logistics or support which he requires from the State Government for completing the task being conferred upon him by this Court.

11. The State Government would be duty bound to provide such backup and infrastructure which would be needed to complete the task in the shortest possible time.

12. All the Vice-Chancellors or In-charge of the University, including Registrars are directed to render fullest cooperation to Justice Jha for furtherance of the objective for which he has been requested by this Court without any let or hindrance being created by them.

13. The Court further observes that the university-authorities will not take any precipitative action against the teachers during the pendency of the exercise, which will be carried out by Justice Jha and the interim order of stay, whether granted or not in each and every Writ Application would continue to operate.

14. After the exercise is completed by Justice Jha, a report would be tendered to this Court for consideration and further direction. All these cases would be

required to be listed for further direction on a mention being made, either by the petitioners or the State when the exercise is completed and report submitted to this Court.

15. A copy of this Order would be communicated to His Lordship, Justice S. N. Jha as well as to the Chief Secretary, Government of Bihar as well as the Vice-Chancellors of the university as well as a copy thereof to the Registrars of the University for due compliance.