

(2021) 03 JH CK 0037

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2413 of 2003, 3834 of 2013, 4321 of 2014

Jharkhand State Non-Formal Employees Association, Ranchi
And Ors

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 03-03-2021

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 34, 34(4)
Constitution of India, 1950 — Article 14, 37, 39(d)

Citation : (2021) 03 JH CK 0037

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : Rajeev Ranjan, Baleshwar Yadav Rajesh Kumar Mahtha, Atanu Banerjee, Rakesh Kumar Shahi, H. K. Mehta

Final Decision : Disposed Of

Judgement

C.A.V. Order I.A. Nos. 5150 of 2016, 5158 of 2016, 5277 of 2016, 6326 of 2016, 6329 of 2016, 6925 of 2016, 7226 of 2016, 7770 of 2016 & 7755 of 2016.

All these interlocutory applications have been filed with a common prayer to intervene in W.P.(S) No. 2413 of 2003. Similar prayer has been allowed

by this court in I. A. Nos. 3378 of 2015, 4403 of 2016 and 4404 of 2016 vide order dated 20.07.2016.

The proposed intervenors claim that they are similar to the writ petitioners having a common prayer and also included within the 676 Non Formal

Education Supervisors belonging to the State of Jharkhand. In view of the similarity in the prayer made by the proposed intervenors allowing such

applications would prevent multiplicity of proceedings.

Accordingly, all the interlocutory applications are allowed and the proposed intervenors shall be treated as petitioners in W.P.(S) No. 2413 of 2003.

In W.P.(S) No. 2413 of 2003, the petitioner has prayed for the following:

(a) For a direction upon the respondent to implement and enforce the scheme for absorption of Non Formal Education Supervisors prepared by the

respondent - State and filed before the Patna High Court in C.W.J.C. No. 1458 of 1998 with appropriate modification as contemplated and directed by

the High Court through its different orders and directions issued from time to time;

(b) For a direction upon the respondents to act in terms with the scheme and observation of the Full Bench and in compliance with the order passed

therein M.J.C. No. 3442 of 1997 wherein a specific direction was issued to the respondent - State to finalise and act in terms with the schemes within

6 months;

(c) For a direction upon the respondents to act pursuant to the letter issued by the Secretary, Primary Education, Government of Bihar vide letter

dated 23.12.2000 whereby and whereunder pursuant to the scheme for absorption prepared and finalised by the erstwhile State of Bihar, a total

number of 2655 Non Formal Education Supervisors having been identified by adopting a methodology and through a proper and duly constituted

Committee which having been duly approved by the cabinet of the erstwhile State of Bihar. The list of 676 Non Formal Education Supervisors

belonging to the State of Jharkhand have been sent to the State of Jharkhand and the Chief Secretary of the Government of Jharkhand has been

directed to take appropriate steps for absorption of 676 identified Non Formal Education Supervisors by the State of Jharkhand;

(d) For quashing of the order contained in Memo no. 849 dated 02.04.2003 issued by the respondent no. 2 whereby the representation of the

petitioners pursuant to the order dated 21.02.2002 passed in W.P.(S) No. 1333 of 2002 has been rejected which is in violation of the judgment of the

Full Bench dated 11.11.1994 passed in C.W.J.C. No. 1458 of 1998 as well as in contravention of the order dated 20.07.2000 passed in M.J.C. No.

3442 of 1997;

(e) To hold and declare the action of the respondent no. 2 as grossly illegal and arbitrary and in direct violation and contravention of the order and

judgment of the High Court in its order dated 20.07.2000 passed in M.J.C. No. 3442 of 1997;

(f) To hold and declare that the scheme framed by the erstwhile State of Bihar having been approved by the High Court and further direction to

implement the same scheme having already attained finality by getting its approval and sanction from the cabinet before the creation of the State of

Jharkhand, it is incumbent and mandatory upon the State of Jharkhand to implement the scheme and absorb the petitioner and its members numbering

a total of 676 Non Formal Education Supervisors.

In W.P.(S) Nos. 3834 of 2013 and 4321 of 2014, the prayers are same and similar and the same are noted hereinunder:

(a) The petitioners have prayed for issuance of an appropriate writ order or direction commanding upon the respondents to hold and declare that a

scheme framed by the erstwhile State of Bihar duly filed in the High Court and further direction to implement the same scheme having already

attained finality by getting its approval and sanction from the cabinet before the creation of the State of Jharkhand. It is incumbent and mandatory

upon the State of Jharkhand to implement the scheme and absorb the petitioners;

(b) For a direction upon the respondents to complete the process forthwith for absorption of erstwhile Supervisors like the petitioners as the process is

pending since long and they are at starving position and several authorities have recommended and the concerned Education Minister had also made a

recommendation during the session of the legislative assembly;

(c) For a direction upon the respondents to follow/enforce Section 34 (4) of the Bihar Reorganisation Act, 2000 as pursuant to Section 34 (4) of the

Act, the benefits arising out of the order passed in C.W.J.C. No. 1458 of 1988 by the Full Bench of the Hon'ble Patna High Court and in Contempt

Case No. 3442 of 1997 are applicable and enforceable in favour of the Non Formal Education Supervisors like the petitioners whereby and

whereunder a clear and specific direction was given to implement the scheme for absorption of the petitioners pursuant to which already a selected

panel of Non Formal Education Supervisors were identified being 2655 out of which 676 persons identified have already been transferred and sent to

the Chief Secretary of the State of Jharkhand for compliance and implementation

of the scheme for absorbing 676 Non Formal Education Supervisors belonging to the State of Jharkhand and as the State of Bihar has already done absorption implementing the above orders.

The facts of the case are primarily culled out from those delineated in W.P.(S) No. 2413 of 2003. The petitioner no. 1 in W.P.(S) No. 2413 of 2003 is an association of retrenched Non Formal Education Supervisors to champion their cause particularly for their absorption/regularization and is a affiliated/branch and part and parcel of Bihar State Non Formal Education Employees Union. The petitioner nos. 2 to 4 as well as the rest petitioners added by allowing of their respective interlocutory applications in the said writ applications as well as the other writ applications are retrenched Non Formal Education Supervisors who are running from pillar to post since 01.09.1985 for their regularization and absorption and finally they were stopped from working since 1995. The petitioner nos. 2 to 4 and all the members of the petitioners' association in W.P.(S) No. 2413 of 2003 as well as the petitioners in W.P.(S) No. 3834 of 2013 and W.P.(S) No. 4321 of 2014 are retrenched Non Formal Education Supervisors, and all the members of the association have worked as Non Formal Education Supervisors since the year 1985 when the Non Formal Education was bifurcated from the Department of Primary Education and attached in the Department of Adult Education popularly known as Adult Non Formal Education Department in achieving the goal of imparting primary education to the children in between the age group of 6-14 years who were prevented to drop out for any reason whatsoever from being imparted formal education.

The Non Formal Education Supervisors were all appointed through due process of selection and many of them were appointed through a common panel prepared for Adult Education Supervisors after the due process of advertising and selection as and when the vacancy arises from the same panel. Many persons were appointed as Non Formal Education Supervisors from the panel of Adult Education Supervisors while others were appointed by the Screening Committee constituted by the Directorate of Mass and Adult Education and the petitioners were given letters of appointment.

Several writ applications were filed before the Patna High Court for absorption/regularization and for giving equal pay for equal work to Non Formal

Education Supervisors similar to the Adult Education Supervisors in C.W.J.C. No. 1458 of 1998 and other analogous cases. An interim order was

passed by which the State Government was directed to consider framing of scheme for regularization/absorption. The draft scheme was ordered to be framed subject to the approval of the court.

Pursuant to the order of the Patna High Court, a draft scheme was prepared for regularization of Non Formal Education Supervisors. The writ application was finally disposed of by the Full Bench on 11.11.1994.

In order to frustrate the claim of the members of the petitioners association in W.P.(S) No. 2413 of 2003 apart from the other writ petitioners, the

respondents took a decision to abolish the post of Adult Education Supervisor and as such they were removed from service which constrained them to

file writ application challenging their termination in C.W.J.C. No. 5063 of 1992. In the said writ application, the court had directed for the adjustment

of Adult Education Supervisors.

The petitioners had represented the authorities about the fallacies in the scheme and for suitable modification for facilitating their

absorption/regularisation.

Since the orders passed by the Patna High Court were not being implemented, contempt applications were filed being M.J.C. Nos. 3442 of 1997 and

691 of 1997 and those were disposed of by a common order dated 20.07.2000 by directing the respondents to take a decision in terms of the scheme

in one way or another within a period of six months. After the disposal of the contempt applications, several representations were filed by the

aggrieved persons before the concerned authority.

The Commissioner cum Secretary, Primary and Adult Education, Bihar, Patna vide letter dated 04.08.1999 had directed the sub-ordinate authorities to

prepare a panel of Non Formal Education Supervisors for their absorption and thereafter office order dated 25.10.1999 was issued by the Director,

Mass Education itself.

A scheme was prepared for finalizing the list of Non Formal Education Supervisors and the name of only those Non Formal Education Supervisors

were added in the panel at the State level for the purpose of absorption who had worked for at least 3 years as a Non Formal Education Supervisor.

Since in the meantime the State of Bihar got bifurcated leading to the State of Jharkhand coming into existence, the Secretary, Primary and Adult

Education Department, Government of Bihar vide letter dated 23.12.2000 communicated to the Chief Secretary, Government of Jharkhand regarding

the list prepared for absorption of Non Formal Education Supervisors. It was intimated that out of the total number of 2655 Supervisors, 676 belongs to

the State of Jharkhand and as such they have to be now absorbed by the State of Jharkhand.

Though, the list of Non Formal Education Supervisors duly prepared by a Committee belonging to the State of Jharkhand had already been sent by the

State of Bihar in the month of December 2000, but since no action was being taken by the State of Jharkhand, a writ application was preferred being

W.P.(S) No. 1333 of 2002 which was disposed of on 21.02.2002 directing the State Government through Secretary, Primary Education to consider the

representation of the said petitioners and take a final decision in the light of the order passed in M.J.C. No. 3442 of 1997. However, vide impugned

order dated 02.04.2003, the representation of the petitioners was rejected.

In the counter affidavit filed by the State, it has been revealed that the petitioners were engaged as Supervisors in the centrally sponsored scheme

namely, Non Formal Education in the erstwhile State of Bihar since 1985. The claim of the petitioners for regularization and absorption in the

government service by the State of Jharkhand has no merit because they worked under the said scheme on a part time job. It has further been stated

that Non Formal Education Supervisors were never appointed against any sanctioned post or on a scale of pay of the Government. The writ

petitioners were working as Supervisors in the said scheme and were working on an honourarium basis. The scheme has been abolished by the

Government of India in the year 2001; subsequently the State of Jharkhand decided to close the scheme w.e.f. 16.05.2001. It has also been stated that

a similar case being W.P.(S) No. 7867 of 2012 has been dismissed by this court on merits. The counter affidavit further reveals that it is not binding on

the Government of Jharkhand to absorb honourarium basis Supervisors in line with the decision taken by the Government of Bihar.

Mr. Rajiv Ranjan, learned senior counsel for the petitioner in W.P.(S) No. 2413 of 2003 has stated that the Non Formal Education Supervisors in the

State of Jharkhand have been discriminated against vis-à-vis their counterparts in the State of Bihar. He has referred to the Full Bench judgment of the Patna High Court in the case of "Bishundeo Choudhary and others Vs. State of Bihar" reported in 1995 (1) PLJR 123 and has stated that a scheme was framed by the government and liberty was given to the Supervisors that if there were certain hardships, it was open to the candidates to approach the government for necessary modification or its amendment. Learned senior counsel has submitted that a draft scheme was prepared pursuant to the interim order of the court. It has also been stated that the proposal for amendment of Bihar Prambharik Niyukti Niyamawali and Sanshodhan Niyamawali was kept pending because of the pendency of the S.L.P. No. 2387 of 1996 and on its disposal in September 1997, the department had decided to implement the schemes. Attention has been drawn of the court to the order passed in M.J.C. No. 3442 of 1997 and its analogous cases and it has been submitted that the concerned respondents were directed to act in terms of the scheme and observations of the Full Bench. It has been stated that pursuant to the order passed in M.J.C. No. 3442 of 1997 and its analogous cases, a resolution was adopted and the Bihar Prambharik Niyukti Niyamawali was amended. He has also referred to the communication dated 04.08.1999 issued by the Secretary, Department of Primary and Adult Education by which a direction was given to the Divisional Commissioner and other concerned authorities to constitute a Committee for preparation of a list of Non Formal Education Supervisors. Consequent to the communication dated 04.08.1999, authorities were nominated in the different districts falling within the State of Jharkhand. Mr. Rajiv Ranjan, learned senior counsel has submitted that a list of 2655 Non Formal Education Supervisors was prepared out of which 676 fell in the district situated in the State of Jharkhand. It has been stated that a proposal for approval of the Committee was prepared on 12.01.2001 by the Secretary, Department of Primary and Adult Education, Government of Bihar, Patna in which decisions were taken to absorb/regularize 1979 Non Formal Education Supervisors while sending the list of 676 Non Formal Education Supervisors to the State of Jharkhand. He has referred to the notification dated 06.06.2001 by which the government had approved of the amendment of rules and for which Nationalized Elementary School (amended) Appointing Rules, 2001 had been issued and published. Learned senior

counsel adds that since the State of Jharkhand was not taking any action pursuant to the list of Non Formal Education Supervisors being sent to the State of Jharkhand, the petitioners were compelled to file a writ application being W.P.(S) No. 1333 of 2002 which was disposed of on 21.02.2002 with a direction to the State of Jharkhand to consider the representation of the petitioner and take a final decision within a period of 3 months and consideration was also to be made of the order passed in M.J.C. No. 3442 of 1997 and its analogous cases. Learned senior counsel submits that without considering the background facts and circumstances of the whole issue at hand and that the scheme was only to be implemented which already stood sanctioned and approved by the Cabinet, the concerned respondent had rejected the representation vide order dated 10.03.2003. He has also referred to the rejoinder of the petitioner in W.P.(S) No. 2413 of 2003 to the counter affidavit filed by the respondents dated 09.01.2009 and has stated that the Government of Jharkhand had initiated the process of regularization/absorption as data was collected from various districts and sent to the Director, Primary Education, Government of Jharkhand. He has also submitted that several persons who were earlier working in the Non-Formal and Adult Education Scheme have been absorbed by the Government of Jharkhand. While replying to the various orders relied upon by the State in the supplementary counter affidavit, submission has been advanced that their case is distinct and different from that of the present petitioners. Relying on the supplementary affidavit dated 28.01.2010, it has been submitted that in the final resolution of the Government of Bihar dated 12.01.2010, the remaining Non Formal Education Supervisors have been adjusted and all have been absorbed against the sanctioned vacant Class III posts of the Government. The petitioners have obtained the notes relating to the progress in their cases for absorption/regularization through Right to Information Act, wherein the minister has observed that the claim of the petitioners should be treated at par with their counterparts in the State of Bihar. Mr. Rajiv Ranjan, learned senior counsel has concluded his argument by stating that the impugned order deserves to be quashed and set aside. Mr. Baleshwar Yadav, learned counsel for the petitioner in W.P.(S) No. 3834 of 2013 and W.P.(S) No. 4321 of 2014 basically reiterated the submissions of the learned senior counsel in W.P.(S) No. 2413 of 2003.

Learned Government Advocate has initiated his argument by referring to the decisions rendered by the Full Bench in the case of ""Bishundeo

Choudhary Vs. State of Bihar"" (supra) and has stated that Full Bench had never directed the absorption/regularization of the Non Formal Education

Supervisors. He has referred to various paragraphs of the Full Bench judgment to buttress his submission. It has been stated that only because the

State of Bihar had prepared the scheme for regularization/absorption of Non Formal Education Supervisors, controversies and complications have

arisen. Learned State counsel submits that since the scheme under which the petitioners were working as Non Formal Education Supervisors have

been closed, there is no question of their regularization/absorption at this juncture. Putting reliance on the reply filed by the respondent no. 3 dated

12.11.2009, it has been stated that the claim of similarly situated group of persons have been rejected by this court in W.P.(S) No. 3285 of 2002 and

W.P.(S) No. 3298 of 2002 and one of the reasons was the closure of the scheme in the year 2001 itself. Reference has also been made to the case of

Santana Tudu and others Vs. State of Jharkhand and others"" in W.P.(S) No. 6318 of 2002, wherein also the prayer for absorption was not interfered

with by this court. It has further been stated that on 03.09.2014, this court had wanted to be apprised as to whether any final decision has been arrived

at in the process of absorption of Non Formal Education Supervisors. A decision has been taken vide order dated 17.03.2015 refuting the claim of the

petitioners, but the said order has not been challenged by the petitioners. Learned Government Advocate has summed up his argument by emphasizing

on the point that the petitioners were appointed under a scheme and since the scheme itself had come to an end, the claim for regularization/absorption

also comes to an end. It has also been stated that Section 34 of the Bihar Reorganisation Act is not applicable in the facts and circumstances of the

case.

Equipped with the submissions advanced by the learned counsel for the parties, it is to be seen as to whether the claim of the petitioners for

absorption/regularization is tenable or not. A scheme was introduced by the Ministry of Human Resources Development, Government of India, New

Delhi, known as Non Formal Education in which financial assistance to implement such scheme was provided to the State in the ratio of 50:50. The

State Government in terms of the scheme was to engage supervisors on a condition that they should be local persons residing in the close proximity of the centres. Pursuant to the said scheme, supervisors were engaged on a honourarium basis. The Non Formal Education Supervisors individually as well as through their Union had preferred separate writ applications being C.W.J.C. No. 1458 of 1998 along with its analogous cases and since the learned Single Judge had disagreed with judgment of the Division Bench passed in C.W.J.C. No. 7003 of 1998 rejecting similar applications had directed the records be placed before the Hon'ble Chief Justice to consider the desirability of referring it before the Full Bench. Consequent to the same, the matter was placed before the Full Bench, which had passed an order dated 11.11.1994. Learned Government Advocate in course of his argument had relied on the judgment of the Full Bench reported in 1995 (1) PLJR 123 and specifically with respect to the following paragraphs:

8. "Further case is that most of the petitioners and intervenors had applied for appointment to the post of supervisors, Adult Education Scheme on the basis of advertisement made on 9.6.1983. Thereafter, they along with Adult Education Supervisors appeared at the interview before a Common Selection Committee and then a panel was prepared. Out of the panel in question some of the candidates were appointed as Adult Education Supervisors and remaining were appointed as supervisors, Adult & Non-Formal Education. Therefore, qualification and process of selection of both being common, the State is not justified in giving a different treatment to the petitioners to what is available to the supervisors of the Adult Education Scheme.

9. On the other hand, the stand of the respondent-State is that the petitioners and the intervenors cannot be permitted to equalise their claim to that of Adult Education Supervisors. The unequals cannot be considered as equals. Admittedly, the appointments of the petitioners and the intervenors were made without advertisement because the posts over which they have been appointed were not advertised. The Adult Education Supervisors were appointed in a scale on the whole-time basis whereas the appointment of the petitioners and the intervenors are purely ad hoc and part time. They are only required to work for four-hours a day, whereas the Adult Education Supervisors are engaged for whole of the day. The mode of requirement of

the petitioners and the Adult Education Supervisors was altogether different. Admittedly, the panel in question was not prepared for appointment of supervisors of Non-formal Education. In fact, it was for the appointment of Adult Education Supervisors. If some of the persons left out from that very panel volunteered their services to work as supervisors under the Non-formal Education Scheme, they cannot claim that such appointments were made on regular basis.

17. From bare reference to clauses (d) and (e) of the aforesaid document, it would appear that a supervisor working under that scheme was required to stay for the whole of the day in the village. Besides the aforesaid, such supervisors could not leave the headquarters without permission of the authority. In these background, it was held that such supervisors were not part-time functionaries but were whole-time functionaries. It would be appropriate to quote paragraph 8 of the judgment hereunder:

8. It is therefore futile to contend that the petitioners in their capacity as Supervisors were required only to perform part-time work. As per clause (d) of the aforesaid extract, the supervisors were required to stay for the whole day in the village and were required to visit the Informal Education Centre (in the day?) and the Adult Education Centre in the night. They were also required to go on tour and to remain at the headquarter once a week from 9.30 a.m. to 4.00 p.m. The conclusion is therefore inevitable that the petitioners were not part-time functionaries but were whole-time functionaries.

18. In the background of the facts stated above, it is apparent that having regard to the service condition of the supervisors of that case, the Supreme Court held that the supervisors working under that scheme were entitled for equal pay for equal work.

19. However, while rejecting the contention of the State that the supervisors were working in a temporary scheme and against a post which was not sanctioned, the Supreme Court in the said case observed whether appointments are for temporary period and the schemes are temporary is irrelevant once it is shown that the nature of the duties and functions discharged and work done is similar. In support of the aforesaid submission, reliance was placed over the case of The Employees of Tannery and Footwear Corporation of India Ltd. v. Union of India [1991 Supp (2) SCC 565]. It was held that mere fact that the employees were working in two distinct legal entities is

not material because both are instrumentalities of the Central

Government. If there was no change in the duties and functions of the persons holding corresponding posts in two organisations, the claim for 'equal

pay for equal work' cannot be denied.

21. As I have already noticed, the case of the petitioners and the intervenors before me is not identical to the case of Bhagwan Dass (supra). In that

case on the basis of relevant document on the record, it was established that the supervisors were appointed on whole time basis and they were

required to attend their job throughout the day. Similarly, the ratio as laid down in the cases of The Employees of Tannery & Footwear Corporation

and G.C. Ghosh (supra) as noticed above, has no bearing over the facts of the present case. Therefore, the petitioners cannot get any benefit on the

basis of these Judgements.

22. No doubt, in the present case, learned counsel appearing in C.W.J.C. No. 5071 of 1987 and C.W.J.C. No. 2807 of 1988 took us to certain

documents contained in Annexures 14 and 15 series to show that from time to time some of the petitioners were required to attend duty of census

work, rehabilitation etc. besides their normal duty like regular employees. Therefore, it is stated that the petitioners were required to attend the duty for

whole of the day like their counterparts. In my view, on basis of such stray examples, the petitioners cannot they allowed to claim that they are

working to whole time basis. I have already noticed certain documents placed on the record which show that the supervisors working under the

scheme in question are only required to attend duties for four hours. No restriction has been imposed against them that they cannot perform any other

duty like the Government employees. Such appointment is purely part time. Therefore, they cannot be equated with the Adult Education Supervisors,

who were appointed in a scale.

23. The principle of 'equal pay for equal work' is not an abstract one. It is open to the State to prescribe different scales of pay for different cadres

having regard to the nature of duty, responsibilities, education and qualifications. In this regard, it would be appropriate to notice the case of V.

Markendeya v. State of Andhra Pradesh ((1989) 3 SCC 191 : AIR 1989 SC 1308). While examining different decisions on this issue, Hon'ble Mr.

Justice K.N. Singh, who was also a party to the judgment of Bhagwan Dass

(supra) held thus:

10. XXXXX The principle of 'equal pay for equal work' is not abstract one, it is open to the State to prescribe different scale of pay for different

cadres having regard to nature, duties, responsibilities and educational qualifications. Different grades are laid down in service with varying

qualification for entry into particular grade. Higher qualification and experience based on length of service are valid considerations for prescribing

different pay scales for different cadres. The application of doctrine arises where employees are equal in every respect in educational qualifications,

duties, functions and measures of responsibilities and yet they are denied equality in pay. If the classification for prescribing different scales of pay is

founded on reasonable nexus the principle will not apply. But if the classification is founded on unreal and unreasonable basis it would, violate Arts. 14

and 16 of the Constitution and the principles of 'equal pay for equal work' must have its way.

XXXXX

24. In the case of Supreme Court Employees Welfare Association v. Union of India ((1989) 4 SCC 187 : AIR 1990 SC 334), it was held that doctrine

of 'equal pay for equal work' does not come out of Article 14, as an abstract doctrine. But if any classification is relating to pay and scale, it must be

proper. In other words, where unequal pay has brought about a discrimination within the meaning of Article 14, it will be a case of 'equal pay for equal

work'. But if the classification is proper and reasonable such doctrine cannot be attracted. It would be appropriate to quote the relevant finding of the

Supreme Court hereunder:

38. XXXXX If the classification is proper and reasonable and has a nexus to the object sought to be achieved the doctrine of 'equal pay for equal

work' will not have any application even though the persons doing the same work are not getting the same pay. In short, so long as it is not a case of

discrimination under Art. 14 of the Constitution, the abstract doctrine of 'equal pay for equal work', as envisaged by Art. 39(d) of the Constitution, has

no manner of application, nor is enforceable in view of Art. 37 of the Constitution.

28. The other claim of the petitioners is that some of them have been working continuously with effect from 1987, therefore, this is a fit case in which

the Court should direct the State Government to regularise their services in a

regular cadre. Learned Advocates for the parties have referred to a volume of decisions of the Supreme Court in support of their submissions. Admittedly, such issue has come up before the Courts on several occasions.

The rise in population and, therefore, mounting problems of unemployment is one of the main causes which attracts the Courts whenever a hardship in this regard is noticed. Therefore, in view of the settled precedents of the Supreme Court, it is not necessary for me to examine all the cases referred by the parties.

The writ applications referred to above were dismissed. However, the scheme framed by the Department of Human Resources was noticed by the

Full Bench and since a plea was raised by those petitioners that the scheme has been made to defeat their genuine claim, it was directed that it would

be open to the candidates to approach the government for necessary modification or its amendments. The judgment of the Full Bench was followed by preferring several contempt applications being M.J.C. No. 3442 of 1997 and its analogous cases which were disposed of on 20.07.2020. In the said

order although, the opposite parties therein were not proceeded against, but a direction was issued to act in terms with the scheme and observation of

the Full Bench immediately, but not later than a period of 6 months from the date of receipt/production of a copy of that order. It was also observed

that at the time of consideration of the cases of the petitioners and other, similarly situated persons in terms with the scheme, the authorities were to

look into individual hardships, if any if brought to the notice by one or other individual.

In the undivided State of Bihar, the final gradation list of all Non Formal Education Supervisors were 2655 and after bifurcation of the State 676

Supervisors were found to be residents of the State of Jharkhand and accordingly the State of Jharkhand was intimated to take steps for

regularization/absorption of the services of 676 Non Formal Education Supervisors. It is to be noted herein that in the State of Bihar, the Non Formal

Education Supervisors were adjusted/ absorbed/ regularized. This court in W.P. (S) No. 1333 of 2002 had directed vide order dated 21.01.2002 to the

respondent no. 3 to look into the grievance of the petitioners and take a decision in accordance with law and while disposing of the representation shall

take into consideration the judgment relied upon by the petitioners. Learned

Government Advocate has relied upon the case of ""Tilakdhari Ravidas & Ors. Vs. State of Jharkhand"" in W.P.(S) No. 7867 of 2012 by stating that the said writ applications being similar to the present writ applications have been dismissed and accordingly the present writ applications also deserves the same fate. It is to be noted herein that Non Formal Instructors had filed a writ application before the Patna High Court for regularization of their services in C.W.J.C. No. 8418 of 2010 which was disposed of on 24.01.2011 and it was held that the respondents were not justified in not absorbing Instructors also in regular service at least on Class IV post and on the lines they have absorbed the Supervisors of the programme. It was further directed that the respondents should apply the same policy in respect of the Instructors of the programme and absorb them in regular government service as per their qualification and eligibility. The learned Single Judge had further held that order should be issued for their absorption within a period of 4 months from the date of receipt/production of a copy of the order. The order passed in C.W.J.C. No. 8418 of 2010 as referred to above was challenged by the State of Bihar in L.P.A. No. 1489 of 2011 which was dismissed in which it was held that the State policy in response of Supervisors be adopted mutatis mutandis with only addition that it would apply to the Instructors who were found working for 3 years continuously at the time when the Non Formal Education Scheme was abolished in which they were working. The Letters Patent Appeal was dismissed with observation and directions. The State of Bihar had moved the Hon'ble Supreme Court in Special Leave to Appeal - C. No. 32079 of 2015 which was also dismissed vide order dated 26.02.2016.

What would fall from the above is that the scheme which was framed for absorption/regularization of the Non Formal Education Supervisors was implemented by the State of Bihar and the 676 Non Formal Education Supervisors falling in the gradation list were denied a similar treatment, although in M.J.C. No. 3442 of 1997, the order passed on 20.07.2000 was categorical with respect to the direction upon the State to act in terms of the scheme and the observations of the Full Bench.

The impugned order dated 02.04.2003 was passed by the respondent no. 2 herein, consequent to the order dated 21.02.2002 passed in W.P.(S) No. 1333 of 2002. The impugned order dated 02.04.2003 had rejected the

contention of the petitioners primarily on the basis of the orders passed by this court in W.P.(S) No. 5170 of 2002 and W.P.(S) No. 6135 of 2002. The petitioners' association has made a written submission which is also a part of W.P.(S) No. 2413 of 2003 and on perusal of which reveals that the entire facets of the case and the discrimination which has been meted out vis-À-vis, the Non Formal Education Supervisors in the State of Bihar had been highlighted, but none of the said contentions finds place in the impugned order dated 02.04.2003. What can be culled out from the factual aspects and the submissions advanced by the learned counsel for the petitioners is the discrimination they have faced after the bifurcation of the State whereas the Non Formal Education Supervisors in the final gradation list placed in the State of Bihar have been given a different treatment. The orders of the Full Bench in the case of ""Bishundeo Choudhary and others Vs. State of Bihar"" reported in 1995 (1) PLJR 123 and the order passed in M.J.C. No. 3442 of 1997 and its analogous cases were passed prior to the bifurcation of the State of Bihar and coming into existence of the State of Jharkhand. The impugned order dated 02.04.2003 therefore does not seem to have considered the attending circumstances and the background facts of the case which have been categorically stated in the written submissions given by the petitioners' association. Even the Instructors in the State of Bihar were treated at par with the Supervisors and directions were issued for their regularization which was affirmed upto the Hon'ble Supreme Court. It is to be noted herein that in the notings obtained by the petitioner under Right to Information Act, the concerned Minister had observed that the claim of the petitioners should be treated at par with their counterparts in the State of Bihar. The various aspects associated with the present case has not at all been considered by the respondents no. 2 vide the impugned order dated 02.04.2003 and since the impugned order suffers from infirmity and unreasonableness, the same deserves to be quashed and set aside. Accordingly, in view of what has been discussed above, the impugned order dated 02.04.2003 passed by the respondent no. 2 is hereby quashed and set aside and the matter is remanded back to the respondent no. 2 to take a fresh decision in accordance with law by giving an appropriate opportunity to the respective parties within a period of 4 months from the date of receipt/production of a copy of this order.

These writ applications stand disposed of with the aforementioned observations and directions.