

**(1988) 05 PAT CK 0005**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 848 of 1987

Pramod Kumar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 27-05-1988

**Acts Referred:**

Constitution of India, 1950 — Article 225, 226, 311

**Citation :** (1988) PLJR 923

**Hon'ble Judges :** S.B. Sinha, J

**Bench :** Single Bench

**Advocate :** Basudev Prasad, for the Appellant; Shyama Pd. Mukherjee, for Respondents 5 and 6 and Mr. Kamalapati Singh, G.P.V. for the State, for the Respondent

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## Judgement

S.B. Sinha, J.—In this writ petition, the petitioners initially prayed for issuance of a writ of certiorari for quashing the impugned recommendation dated the 28th February, 1987, as contained in Annexure-5 to the writ petition and further for a writ in the nature of mandamus directing the respondents to allow the petitioners to continue on the posts which they held till they attained the age of superannuation without giving effect to the impugned recommendation. Thereafter, the petitioners filed an application for amendment of the writ petition, inter-alia, praying therein that an appropriate writ be issued by this Court quashing the order dated the 18th April, 1987, as contained in Annexure-6 to the said application for amendment of the writ petition as also the order dated the 18th April, 1987, as contained in Annexure-7 thereto. The facts of the case lie in a very narrow compass.

2. The Bihar Rajya Awar Seva Chayan Parishad (The Bihar State Subordinate Services Selection Board) invited applications from eligible candidates for appointment to the posts of Steno Sub-Inspector in the office of the Director General-Cum-Inspector General of Police, Bihar, Patna. The requisite qualification for such posts was that the candidate should be graduate from a recognised

University. The aforementioned Board also invited applications from eligible candidates for appointment to the posts of Steno Assistant Sub-Inspector in the said office and in the office of the Inspector General of Police, Cabinet (Vigilance) Department. So far as the posts of Steno Sub-Inspector are concerned, the same were in the scale of Rs. 730-1080 whereas the posts of Steno Assistant Sub-Inspector were in the scale of Rs. 680-965/-. Admittedly, the petitioners applied for the posts of Steno Sub-Inspector whereas the respondents Nos. 4 to 16 being eligible for appointment to the said posts applied for both the posts of Steno Assistant Sub-Inspector and Steno Sub-Inspector. It is also admitted that the respondents 4 to 16 filed two different applications for two different posts. The petitioners appeared in one examination, whereas the respondents 4 to 16 appeared in two examinations, allegedly for appointment in two different posts.

3. The petitioners were selected and by a letter bearing No. 4235 dated the 30th June, 1986, they were informed that they had been appointed to the aforementioned posts. So far as the respondents 4 to 16 are concerned, admittedly, although their position was higher than that of the petitioners they were not offered any appointment on the allegation that they had committed fraud in filing two applications and managed to appear in two different tests.

4. One Shri Rajendra Singh purported to be aggrieved by and dissatisfied with the aforementioned order of the State of Bihar whereby and whereunder he was not considered for appointment in the aforementioned post filed a writ petition in this Court bearing C.W.J.C. No. 1713 of 1986. It is admitted that at the time of the admission of the said application, this Court directed that one post should be kept vacant for him.

5. Thereafter, by a judgment dated the 7th August, 1986, a Division Bench of this Court after taking into consideration the arguments advanced on behalf of the parties to the said writ petition held that the posts of Steno Sub-Inspector and the posts of Steno Assistant Sub-Inspector were two different posts and, as such, allowed the said writ petition and quashed the impugned orders and directed the authorities to consider him for appointment to the post of Steno Assistant Sub-Inspector either in "Ka" or "Gha" category. The said judgment is contained in Annexure-A to the counter-affidavit filed on behalf of respondent No. 4. It is admitted that in the aforementioned writ petition, the petitioners were not impleaded as parties. Thereafter, several other persons being Amar Kumar Singh and others tiled a writ petition in this Court which was registered as C.W.J.C. No. 3778 of 1986. By a judgment dated the 5th September, 1986, the said writ petition was disposed of in the following terms:--

So far as this application is concerned, we are disposing it of after hearing the learned counsel for the petitioner and the learned counsel for the State with a direction that the order passed in C.W.J.C. No. 1723 of 1986 on 7.8.1986 be implemented in favour of those persons who are similarly situated.

The aforementioned judgment dated the 5th September, 1986, is contained in

Annexure-B to the counter-affidavit filed on behalf of the respondent No. 4.

In the said writ petition also, the petitioners were not impleaded as parties nor were they heard. The State of Bihar purported to be aggrieved and dissatisfied with the aforesaid decision, filed applications for grant of special leave to appeal before the Supreme Court of India which were registered as SLP (Civil) No. 311 and 1544-45 of 1987. The said Special Leave Petitions were dismissed by an order dated the 11th February, 1987. The order of the Supreme Court of India is contained in Annexure-F to the counter-affidavit filed on behalf of the respondent No. 5.

6. It further appears that the State of Bihar also filed review applications in this Court one of them being Civil Review Application No. 95 of 1986, but it appears from para 17 of the counter-affidavit filed on behalf of the respondent No. 5 that the said review application had also been dismissed.

7. From a perusal of the aforementioned order dated the 11th February, 1987, it appears that another similar writ application was filed in this Court bearing C.W.J.C. No. 3994 of 1986. Thereafter, pursuant to the judgments of this Court in the aforementioned writ applications, the Secretary of the Bihar Rajya Awar Seva Chayan Parishad, by a letter dated the 28th February, 1987, written to the Director General-cum-Inspector General of Police directed withdrawal of recommendations of appointment in favour of the petitioners which was sent vide letter No. 337 Cha. Pa. and 338 Cha. Pa. both dated the 3rd April, 1986. The said letter is contained in Annexure-5 to the writ petition. Thereafter, it appears that by the aforementioned orders dated the 18th April, 1987, as contained in Annexure-6 to the amendment petition, the services of the petitioners were terminated. By another letter dated the 18th April, 1987, the Superintendent of Police, Cabinet (Vigilance) Department asked the respondent No. 4 to appear at an interview on the 28th April, 1987.

8. The State has filed a counter-affidavit in this case wherein it has merely been stated that it has followed the judgments of this Court in the aforementioned writ petitions. Two separate counter-affidavits have been filed on behalf of the respondents 4 and 5, respectively. It has been asserted in the said counter-affidavits that the respondents 4 to 16 evidently secured higher marks than the petitioners and even if the whole matter is remitted to the Parishad or the State Government for a fresh consideration, the State would have no option but to appoint the said respondents.

9. Mr. Basudeva Prasad, learned senior counsel appearing on behalf of the petitioners submitted that the petitioners being not parties in the earlier writ applications are not bound by the said judgment. Mr. Prasad has further contended that even from a perusal of the judgments of this Court as contained in Annexures-A and B to the counter-affidavit filed on behalf of the respondent No. 4, it would appear that the petitioners whereof even did not challenge the offer of appointment made to the petitioners. According to Mr. Prasad, the

judgments passed by this Court in the aforementioned writ petitions being not binding upon the petitioners, State of Bihar while purporting to implement the said judgments could not have withdrawn the selection of the petitioners and terminated their services while purporting to proceed to appoint the respondents 4 to 16. The learned counsel further submitted that the recommendations of the Selection Committee having already been implemented whether rightly or wrongly the question of its withdrawal does not arise. The learned counsel further submitted that the petitioners have been appointed by a valid offer of appointment and in this view of the matter the order terminating their services is wholly illegal, without jurisdiction and is in violation of Article 311 of the Constitution of India. It has further been stated that the petitioners, appointment having not been quashed and/or set aside by the Court, the reasons assigned in the impugned orders being wholly extraneous and not germane the same cannot be sustained by this Court.

10. Mr. Basudeva Prasad, in this connection, has relied upon decisions in the case of *Piare Lal Vs. Union of India (UOI) and Others*, and *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, .

11. The learned Government Pleader No. 5 has not advanced any argument whatsoever except stating that the State being bound by the judgments of this Court in the aforementioned writ applications have implemented the same.

12. Mr. S.P. Mukherjee, learned counsel appearing on behalf of the private respondents, however, made the following submissions:--

(a) The petitioners having no legal right to the posts as they had been appointed on a purely temporary basis, the writ of mandamus cannot be issued at their instance.

In this connection, reference has been made to the cases of *Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College*, and *Dr. Umakant Saran Vs. State of Bihar and Others*, .

(b) By reason of the decisions of this Court, the illegality committed by the Selection Board in not considering the cases of the petitioners having been removed the Board is enjoined to consider the case of all candidates afresh and pass the impugned order.

(c) As the respondents merely challenged the policy decision of the State, it was not necessary for them to implead the petitioners as parties in the earlier writ petitions as all the reliefs were claimed as against the State and no particular reliefs were claimed against any individual.

Reference in this connection has been made to the cases of *A. Janardhana Vs. Union of India (UOI) and Others*, ; *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, ; and *B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others*, .

(d) The appointment of petitioner No. 1 was initially not valid and, as such the writ petition at his instance is not maintainable. It has further been submitted that, if the impugned orders as contained in Annexures-5 and 6 are set aside, the same would give rise to another illegality meaning thereby cancellation of the respondents 4 to 16's examination and in that view of the matter, this Court should not exercise its extraordinary discretionary jurisdiction under Article 226 of the Constitution of India. It has further been pointed out that from Annexure-G to the counter-affidavit filed on behalf of respondent No. 5, it would appear that the names of respondents 4 to 16 are at serials 3 to 12 whereas those of the petitioners are below the said respondents.

(e) It has further been submitted that this Court should not interfere with the impugned orders on the ground of equity also as the respondents 4 to 16 admittedly had obtained higher marks than the petitioners.

13. In reply to the aforementioned submissions, it has been contended by the learned counsel for the petitioners that true it is that the petitioners were appointed temporarily but their services could not have been terminated except on the ground for which the services of a temporary employee can be terminated and not on a ground which is extraneous or not germane thereto. It has further been submitted that the appointment of the petitioners by reason of the offer of appointment as contained in Annexure-4 to the writ application were not void ab initio and in this view of the matter it cannot be contended that the appointment of the petitioners was illegal. It has further been submitted that the petitioners were bound to be impleaded as parties in the earlier writ petitions in this Court as the same concerns their livelihood.

14. In view of the rival contentions of the parties, the followings questions arise for decisions in this case:--

(1) Whether the judgment of this Court passed in C.W.J.C. No. 1713 of 1986 and 3778 of 1986 are binding on the petitioners

(2) Whether the petitioners have any legal right to maintain this writ application?

(3) Whether the applications of the petitioners were valid in law?

(4) Whether in any event the petitioners are entitled to any relief from this Court on the facts and in the circumstances of this case?

15. Re: Question No. (1):

So far as the decisions rendered in C.W.J.C. No. 1713 of 1986 and C.W.J.C. No. 3778 of 1986 are concerned, it is admitted that the petitioners were not parties to these cases. It is an admitted position that no prayer was made in the aforementioned writ petitions for cancellation of the appointments of the petitioners.

16. It is true that by reason of the afore, mentioned judgments, the petitioners have been adversely affected. It is a well known principle of law that a judgment

is binding only on the parties to the case.

Reference in this connection may be made to Spencer Bower and Turner on the doctrine of *res judicata*, wherein under Article 225 at page 198, the learned author has observed that a judicial decision inter parties operates as an estoppel, in favour of, and against, the parties and their privies only. In Article 226 at page 199 of the said Book the said learned author has observed as follows:--

Since there can be no estoppel by *res judicata* unless the claim, defence, or the other matter set up by the person sought to be established is in conflict with the *res judicata*, and since there can be no such conflict unless the parties, or their privies in one proceeding are the same as the parties, or their privies, in the other where both proceedings are in personam it followed that in all cases of this class the onus is on the person asserting estoppel to establish identity of parties, or privies. Whenever the burden has not been discharged in case of any English civil decision inter parties the estoppel negatived. Any question of physical identity of persons is one of facts.

17. In this view of the matter, it must be held that this writ petition is not barred under the principle of *res Judicata*.

18. But the question which arises for consideration is as to whether the judgments passed in the earlier cases as referred to hereinbefore were not maintainable as the petitioners hereof were not parties therein or in other words, the said judgments being not binding upon the petitioners they are to be totally ignored being nullities. In this connection the decision of the Supreme Court in the case of *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, may be noticed. In *Prabodh Verma's* case (*supra*) it has been held by the Supreme Court that a High Court ought not to hear and dispose of the writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and if the petitioners refuse to join them, the High Court ought to dismiss the petition for non-joinder of necessary parties. The decision in *Piare Lal's* case (*supra*), however, does not apply to the facts and circumstances of this case.

However, the Supreme Court in the case of *A. Janardhana Vs. Union of India (UOI) and Others*, ; *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, ; and *B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others*, has held that where no relief is sought for as against a person and a mere policy decision is under challenge, in such an event the petition shall not fail for non-impleading the other persons who might be affected by a result of the said decision. In those cases, either the policy decision of the State was under challenge or the law itself was under attack and there had been a fight in between the two warring groups.

19. However, on the facts and in the circumstances of this case, it must be

noticed that the petitioners of the aforementioned cases some of whom are respondents wherein were really concerned with the orders passed by the State Government refusing to appoint them on the ground that they had taken part in both the examinations. At that stage they were not required to challenge the appointment of the petitioners.

This Court, in its judgment as contained in Annexures-A and B to the counter-affidavit clearly held that the petitioners of the aforementioned cases were discriminated against. In so far as the case of Rajendra Singh is concerned (the petitioner of C.W.J.C. No. 1713 of 1986), there was absolutely no difficulty to accommodate him inasmuch as one post was reserved for him. However, so far as the petitioners of C.W.J.C. No. 3778 of 1986 are concerned, this Court, by order as contained in Annexure-B to the counter-affidavit merely directed the respondents to follow the judgment passed in CWJC No. 1713 of 1986. It may be relevant here to quote the operative portion of the judgment as follows:--

We, therefore, quash the order cancelling the examination of the petitioner and direct the authorities to consider him for appointment to the post of Steno A.S.I. either in the "kha" or "Ga" category.

20. Evidently, by reason of the impugned orders, only the judgments of this Court have been given effect to as a result whereof the petitioners of this writ application might have prejudicially been affected. However, the very fact that by reason of the aforementioned judgments, neither the appointment of the petitioners were cancelled nor were the petitioners thereof directed to be appointed, clearly goes to show that in those cases the petitioners thereof did not claim any relief individually as against the petitioners hereof. The petitioners in the aforementioned writ applications, i.e., the respondents 4 to 16 herein were merely concerned either the arbitrary manner in which the respondents purported to cancel the their examinations. This Court upon a consideration of the facts and circumstances of those cases found that the orders impugned therein were unjust and arbitrary.

In the said cases, the petitioners thereof had alleged arbitrary action on the part of the authorities concerned. This Court also in the said judgments did not grant any relief as against the petitioners of this case but merely directed the State Government to consider the cases of the petitioners thereof for appointment.

21. The State of Bihar and its officers were, thus, bound by the said judgment and were bound to consider the cases of the petitioners of the said writ cases in the light of the directions of this Court. In this situation, in my opinion, although the petitioners herein were not parties to the said writ applications and therefore, were not bound by the judgments passed in the aforementioned cases but the State of Bihar and its officers were bound thereby. The judgments of C.W.J.C. No. 1713 of 1986 and C.W.J.C. No. 3778 of 1986 are thus not nullified as the said writ petitions were maintainable even in absence of the petitioners of this writ petition.

22. Re: Question No. 2.--There cannot be any doubt that the petitioners were appointed in terms of the merit list as it was existing then. At a point of time when such appointments were made no body considered their appointments to be illegal. In this situation, if the services of the petitioners have been terminated because of certain orders passed by this Court, in my opinion, they have a right to maintain the writ application questioning the jurisdiction of the authorities concerned, as also questioning the propriety of the orders impugned in this writ application. In my opinion, if the petitioners succeed in their contention that the impugned orders have been passed on a consideration which was not germane, this petition could be maintained.

If the petitioners' contention is correct that the impugned orders have been passed in spite of the fact that this Court did not cancel their appointment but merely directed the State of Bihar to consider the cases of other candidates and if in the event it is held that the orders of termination have been passed for unauthorised purpose or for reasons not germane for the purpose of passing the said orders, in my opinion, even a temporary employee will have a right to maintain a writ application.

Therefore, the moot question which requires consideration by this Court is as to whether the petitioners had a better claim for appointment in the posts vis-a-vis the other candidates viz respondents Nos. 4 to 16.

23. Articles 14 and 16 of the Constitution of India strikes at arbitrariness. It has been held in a series of decisions by the Supreme Court that arbitrariness and equality are sworn enemies,

Reference, in this connection, may be made to the case of E.P. Royappa Vs. State of Tamil Nadu and Another, , Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and M.K. Agarwal Vs. Gurgaon Gramin Bank and Others, . It is also well known that Articles 14 and 16 of the Constitution of India confer right upon every citizen to be treated equally in the matter of appointment. The petitioners of C.W.J.C. No. 1317 of 1986 and C.W.J.C. No. 3778 of 1986 had also such a right. This Court has held and in my opinion rightly that only they because appeared in two different examinations, i.e., for the post of Steno S.I. and Steno A.S.I., which evidently are two different categories, their candidature could not have been cancelled on that ground. The petitioners of the aforementioned two writ applications, therefore, could legitimately complain about the arbitrary acts on the part of the authorities concerned and this Court has rightly decided the case in their favour. In such a situation, the State of Bihar had no other option but to revise the merit list in accordance with the marks obtained by each candidate and appoint the candidates in order of merit. While making such revision, it has been found that the petitioners who obtained less marks must give way to the petitioners of the earlier cases. An unfortunate situation seems to have arisen but this Court cannot shut its eyes to the legal right which accrued in favour of the petitioners of the earlier writ applications in view of the judgments passed in their favour as also the equitable considerations which are

in their favour in view of the fact that they obtained higher marks than the petitioners of the instant case.

24. In this view of the matter, I am of the view that no relief can be granted to the petitioners, as prayed for by them.

25. Re: Question No. 4--Even assuming for the sake of argument that technically the State of Bihar and its officers have committed illegality in passing the impugned orders but even then this Court may not exercise its jurisdiction under Article 226 in favour of the petitioners, if it is found that by quashing an illegal order the same would give rise to another illegality. The correctness of decisions of a Division Bench of this Court in Civil Writ Jurisdiction Case No. 1713 of 1986 and C.W.J.C. No. 3778 of 1986 is not under challenge in this writ petition and, as such, the same has got to be respected. By reason of the aforementioned judgments as also in view of my finding aforementioned, it would appear that the orders passed by the State of Bihar and its officers concealing the examination of the concerned respondents, who were petitioners in C.W.J.C. No. 1317 of 1986 and C.W.J.C. No. 3778 of 1986, were discriminated against. In view of the fact that such an action on the part of the State of Bihar being violative of equal opportunity in law and equal protection of law as enshrined under Articles 14 and 16 of the Constitution of India, the merit list excluding the names of such candidates was non-est in the eye of law.

In the event the orders impugned the writ application are quashed by this Court, evidently the same would give rise to revival of an other illegal orders namely those who were the subject matter of the aforementioned C.W.J.C. No. 1713 of 1986 and C.W.J.C. No. 3778 of 1986.

26. It is now well settled by the various decisions of this Court and the Supreme Court of India that issuance of a writ of certiorari is a discretionary remedy. In this connection reference may be made in the case of *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, ; *Abdul Majid and Others Vs. The State Transport Appellate Authority and Others*, ; *Devendra Prasad Gupta Vs. The State of Bihar and Others*, ; *Hari Prasad Mandal v. Additional Collector* ( 1978 B.B.C.J. 575 : 1978 PLJR 636); *Banwari Lal Newatia v. Under Secretary to Government of India and others* (1982 BLT 311) : 1988 (1) SCC 40. The aforementioned decisions are authorities for the proposition that writ jurisdiction of a High Court only provides for discretionary remedy and it should not be exercised for quashing an order which might give rise to another illegal order as if substantial justice has been done to the parties.

In this connection, reference may be made to recent decision of mine in the case of *Jai Bharat Transport Company and Another Vs. Central Coal Fields Limited and Others*, wherein it was held that a High Court would be justified in a given case to refuse to interfere with illegal order if it is inequitable so to do or if the same would be against public interest.

27. Taking into consideration all the facts and circumstances of the case, no relief

can be granted to these petitioners in this writ application.

28. However, it may be observed that the petitioners have served the State for some time at a point of time when they were appointed they were not aware that some of the candidates have been left out. In this situation, it is proper for the State of Bihar to create some additional posts apart from the existing posts so as to accommodate all the petitioners

29. In *Miss Arti Sapru and Others Vs. State of Jammu & Kashmir and Others*, , it was held that the cases of the candidates who would be displaced in terms of the judgment delivered by the Supreme Court having already completed a few months of service will be sympathetically considered by the State Government, and while giving the effect to the judgment of the Supreme Court, the rule should be suitably relaxed and if possible a number of seats should be temporarily in order to accommodate the displaced candidates.

Similarly, in the case of *Smita Johnbhai Master and Others Vs. State of Gujarat and Others*, , the Supreme Court held that relief should be granted to a citizen for mitigating harshness of law blended with fairness and equity. In *Syed Kabiruddin Vs. The Dean, Government Medical College, Nagpur and Others*, , a Division Bench of the Bombay High Court, while declaring the rules relating to reservation for passing the 10th and 12th standard examinations, being Rule 5-C(ii) of the relevant rules concerned in the said case as ultra vires, held that, although the petitioners thereof were in law to be discontinued from their studies but they should not suffer since they had already put in one year of studies. The Bombay High Court, therefore, directed the respondents 1 and 2 thereof to work out the number of seats that were filled in during the relevant academic year on the basis of rules declared to be invalid and such number of seats should be filled in by accommodating the candidates from the waiting list on the basis of the merit by creating additional seats in the current session.

Reference in this connection may also be made to the case of *Miss Swapna Rani Das Vs. Utkal University and Another*, .

This Court in a similar circumstance in the case of *Brij Kishore Prasad v. State of Bihar* (1981 BBCJ 553 : 1981 PLJR 460), while issuing a writ of mandamus directing the respondents to admit the petitioners of the said writ petition held that, although the petitioners thereof would be admitted at a later stage and may not be able to complete the courses of studies but they should be given a chance to complete the course of studies and to qualify for a later examination.

In the case of *Dhirendra Chamoli and Another Vs. State of U.P.*, , the Supreme Court, while directing the Nehru Yuvak Kendras to pay to its employees equal pay for equal work expressed hopes that class IV employee should be regularised wherefore posts will be sanctioned by the Central Government in different Nehru Yuvak Kendras, so that those persons could be regularised.

In *B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others*, , the

Supreme Court gave an opportunity to the Government to create supernumerary posts wherever they considered it so to do.

In this connection, reference may be made to the case of State of Punjab Vs. Bhagwant Singh and Others, also. Recently, a Bench of Himachal Pradesh in the case of Anil Minhas and Others Vs. H.P. University, Simla and Others, , directed the University to increase one seat in the First Year M.B.B.S. course in the academic session 1985-86. In the said decision, the Himachal Pradesh High Court followed the aforementioned judgment of the Supreme Court in the State of Punjab v. Bhagwat Singh (supra).

However, this Court in exercise of its power under Articles 226 and 227 of the Constitution of India, cannot direct the State to accommodate several persons by taking them in service, although there is no sanctioned posts therefor.

30. On a consideration of all these aspects of the matter, I hope and trust that the State Government shall create additional posts so that the petitioners may be accommodated keeping in view the fact that the State should act as a benevolent employer and further keeping in view the fact the petitioners have at least put in a few months of service under the State of Bihar and their services had been terminated by reason of a judgment of this Court and not because of any fault on their part. With the aforementioned observations and directions, this writ application is dismissed but there shall be no order as to costs.