

**(2018) 06 PAT CK 0063**

**In the Patna High Court**

**Case No :** Letters Patent Appeal No. 189 Of 2018 In Civil Writ Jurisdiction Case  
No. 7231 Of 2012

State Of Bihar And Ors

APPELLANT

Vs

Rekha Jha And Ors

RESPONDENT

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**Date of Decision :** 20-06-2018

**Acts Referred:**

Bihar Pension Rules, 1950 — Rule 103(d)

**Citation :** (2019) 1 PLJR 23

**Hon'ble Judges :** Rajendra Menon, CJ;Rajeev Ranjan Prasad, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## **Judgement**

Delay of 95 days in filing of this appeal is condoned. I.A. No. 1024 of 2018 stands allowed and disposed of.

Heard on the question of admission.

Seeking exception to an order dated 04.10.2017 passed by the Writ Court in C.W.J.C. No. 7231 of 2012, this has been filed by the State Government

under Clause 10 of the Letters Patent.

The respondent-petitioners were appointed in the Adult and Non-Formal Education Project on various dates between 1985-87. They discharged their

duties regularly and the entire project was scrapped in the year 1990. The services of the petitioners were terminated on retrenchment. Thereafter, a

policy decision was taken to absorb all Non-Formal Education Supervisors on different sanctioned and vacant Class-III posts, in pursuance to which

action was taken and the employees were absorbed. However, as the intervening period when they remained out of job was not counted for grant of

pensionary benefits, the matter came to this Court. Initially in C.W.J.C. No.

20780 of 2010 and C.W.J.C. No. 20801 of 2010 by a detailed order

passed on 19.04.2011 available on the record from page 30 onwards the petitions were allowed and based on an earlier judgment rendered by a

Division Bench of this Court in the case of The Bihar State Adult & Non-Formal Educational Employees Association & Ors.Vs. Bharat Kumar

Srivastava & Ors.- 1996 (2) PLJR 394 both the writ petitions C.W.J.C. No. 20780 of 2010 and C.W.J.C. No. 20801 of 2010 were allowed. In the

writ petitions, the learned Writ Court took note of the provisions of Rule 103(d) of the Bihar Pension Rules and held that on abolition of post or loss of

appointment owing to reduction of establishment or any other reason if there is interpretation of service and the Government subsequently absorbs or

takes back the employees in service, the intervening period can be counted for pensionary benefits.

Interpreting the aforesaid rule, the writ petitions earlier filed by identically situated employees C.W.J.C. No. 20780 of 2010 and C.W.J.C. No. 20801

of 2010 were allowed. When the present writ petition came up for hearing before the Writ Court on 04.10.2017 the detailed order passed goes to

show that the Writ Court took note of the submission made in Paragraph 3 and in Paragraphs 4 and 5 dealt with the issue in the following manner

after considering the submission made by the State counsel:-

â??4. Learned counsel for the respondents appears and has been heard. He fairly accepts that the issue at hand stands covered by the judgment

dated 19.04.2011 in CWJC No. 20780 of 2010 and CWJC No. 20801 of 2010, relied upon by the petitioners.

5. Having heard the parties and on a consideration of the materials on record, this Court finds merit in the writ petition. This Court in its judgment

dated 19.04.2011 passed in CWJC No. 20780 of 2010 and CWJC No. 20801 of 2010 after a detailed consideration of the matter and having

interpreted the provisions of Rule 103(d) of the Rules, held as follows:-

â??15. Admittedly, in the present case, posts of Supervisors were abolished consequent to decision of the Central Government in 1998, on account of

which petitioners and other Supervisors came on road, which situation, in the opinion of this Court, is clearly covered by the expression â??Abolition

of post or loss of appointment owing to reduction of establishmentâ?. Hence, this Court finds that the said sub-rule (d) of Rule 103 clearly comes to

the aid of petitioners and others and not to aid of the respondents, as claimed by them, to deny them benefits of the period.

16. In the circumstances, the impugned order of the Principal Secretary dated 29.03.2010, as contained in Annexure-5, is unsustainable in law and the

same is quashed. Respondents are directed to consider petitioners as continuing in service between 1992 to 1998 on notional basis only for the purpose

of grant of monetary benefits from 1998 onwards and post retiral monetary benefits.

17. It is made clear that petitioners and other Supervisors shall not be entitled for salary of the period in any manner and shall not also claim any

seniority over other Government servants. The period shall be counted in the service only for personal monetary benefits of the petitioners and nothing

more.

18. These writ applications are allowed in the manner, as indicated above.â??

Once in identical matters the issue has been decided and the employees working in the same project have been granted benefit and when the Writ

Court has allowed the writ petition on consideration of these facts, we see no reason to deviate and take a different view now only because the State

Government feels that the present petitioners were appointed in the project on temporary basis and when their services were discontinued after the

project was over. Even if that be so, it was the State Government which took them back into service and absorbed them in view of the policy decision

as was done in the case of other employees who are petitioners in C.W.J.C. No. 20780 of 2010 and C.W.J.C. No. 20801 of 2010 and when benefit is

granted to such similarly situated employees who were also appointed in the same project, we see no reason to deviate and discriminate in the case of

the present petitioners. The Writ Court having followed the principles of law based on the earlier decision, we see no error in the order passed

warranting reconsideration. In fact there is no substantial material available on record to show that the case of the present petitioners are different

from the case of the earlier employees who were considered in C.W.J.C. No. 20780 of 2010 and C.W.J.C. No. 20801 of 2010.

The Letters Patent Appeal is, therefore, dismissed.