
(2010) 11 PAT CK 0090
In the Patna High Court
Case No : C.W.J.C. No. 10788 of 2003

Sunil Kumar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-11-2010

Acts Referred:

Constitution of India, 1950 — Article 142, 21, 213, 226, 41

Citation : (2010) 58 BLJR 1476 : (2011) 1 PLJR 686

Hon'ble Judges : Jayanandan Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jayanandan Singh, J.—INTRODUCTION

(i) Petitioners of all the writ applications are erstwhile class III and class IV employees of Magadh Engineering College, Gaya. They are aggrieved by the refusal of Respondents to absorb them in regular Government service as a consequence of takeover of the College under the provisions of The Bihar Private Engineering College (Taking Over) Ordinance, 1986 (Bihar Ordinance No. 37/86), which, after promulgation of successive Ordinances in continuation, ultimately matured into an Act in 1991 (Bihar Act No. 4/91). Their grievance emanates from the fact that, though they were found fit by the Screening Committee (herein after referred to, at places, as "the 1st Committee", also referred to as "Statutory Screening Committee" or "High Power Statutory Screening Committee" in the records), constituted u/s 5(2) of the Ordinance, for their absorption in Government service, and it recommended as such, persons, who were not found fit by it, were absorbed in service, as admitted by the Respondents themselves, due to "default", as the Respondents could not file appeal against the judgment of learned single judge in CWJC No. 1316 of 1991 Raghunath Singh v. State of Bihar and other analogous cases, rendered in their (Petitioners') favour, in time. As a result, all the available sanctioned posts got filled up and the cases of the Petitioners were rejected finding them surplus and

beyond sanctioned strength as per staffing pattern.

(ii) The 83 Petitioners in CWJC No. 10788 of 2003 have prayed for quashing of the adverse report of the Departmental Committee dated 18.6.2003 (Annexure-10) which considered the individual cases of the 117 claimants, as per the directions of the Apex Court in Civil Appeal No. 2542 of 2002 and other analogous appeals, issued by the common order dated 4.3.2003 (Annexure-9), wherein directions issued by a learned Single Judge of this Court contained in paragraph 42 of the judgment in CWJC No. 1316 of 1991 (Raghunath Singh & other analogous cases) was adopted with modification of 4 months time to 6 months for re-consideration of the claims of the Appellants (Petitioners) also for absorption, by giving them similar treatment as given to the Petitioners of Raghunath Singh & other analogous cases. They have also prayed for quashing of the Office Order contained in memo No. 1242 dated 14.8.2003 (Annexure-11), issued under the signature of Joint Secretary, Department of Science & Technology, Government of Bihar, whereby, agreeing with the recommendations contained in the said report of the Committee, claims of all the Petitioners have been rejected. They have also prayed for commanding the Respondents to absorb them against vacant sanctioned post of class-III and class-IV under the Government as per their respective rank and status.

(iii) The sole Petitioner of CWJC No. 8843 of 1996 has prayed for quashing of order contained in memo No. 323 dated 3.7.1991 (Annexure-2) and also consequential order of his termination contained in memo No. 3264 dated 28.12.1991 (Annexure-6) and for a direction to the Respondents to consider his case in the light of the judgment in CWJC No. 1316 of 1991 (Raghunath Singh) and reinstate him with effect from 31.1.1991 with all consequential benefits.

(iv) The 2 Petitioners of CWJC No. 8844 of 1996 have prayed for quashing of order contained in memo No. 321 dated 31.1.1991 (Annexure-7), dispensing with their services on the ground of being surplus, and for a direction to the Respondents to consider their cases in the light of the judgment of CWJC No. 1316 of 1991 (Raghunath Singh) and to reinstate them in service with effect from 31.1.1991 with all consequential benefits and also for payment of arrears of their salary w.e.f. 30.10.1987.

(v) The 6 Petitioners of CWJC No. 8847 of 1996 have also prayed for quashing of order contained in memo No. 321 dated 31.1.1991 (Annexure-4), dispensing with their services also on the ground of being surplus, and for a direction to the Respondents to consider their cases also in the light of the judgment passed in CWJC No. 1316 of 1991 (Raghunath Singh) and to reinstate them in service on their respective posts with consequential benefits.

(vi) The 8 Petitioners of CWJC No. 11161 of 1996 have also prayed for quashing of order contained in memo No. 321 dated 31.1.1991 (Annexure-5), dispensing with their services also on the ground of being surplus, and to direct the Respondents to act according to the order passed in CWJC No. 1316 of 1991

(Raghunath Singh) and to reinstate them to their original posts.

(vii) The 2 Petitioners of CWJC No. 11167 of 1996 have prayed for quashing of order contained in memo No. 321 dated 31.1.1991 (Annexure-4), dispensing with their services also on the ground of being surplus, and to act according to order passed in CWJC No. 1316 of 1991 (Raghunath Singh) and to reinstate and appoint them against sanctioned vacant posts.

(viii) The sole Petitioner of CWJC No. 12606 of 1996 has prayed for quashing of order contained in memo No. 323 dated 3.7.1991 (Annexure-5), dispensing with his service, and for issuance of a writ in the nature of writ of mandamus commanding the Respondents to reinstate him with effect from 31.1.1991.

(ix) The 2 Petitioners of CWJC No. 4063 of 1997 have also prayed for quashing of order contained in memo No. 321 dated 31.1.1991 (Annexure-6), dispensing with their services also on the ground of being surplus, and to reinstate them also with all consequential benefits.

(x) The 4 Petitioners of CWJC No. 4242 of 1997 have also prayed for quashing of the order contained in memo No. 321 dated 31.1.1991 (Annexure-4), dispensing with their services also on the ground of being surplus, and for issuance of a writ in the nature of writ of mandamus commanding the Respondents to consider their cases also in the light of their original appointment and seniority, in view of the recommendation of the Principal dated 12.12.1991 (Annexure-5) and in view of the recommendations of the Screening Committee and to declare notification No. 1264 dated 29.4.1993 as illegal, malafide, etc.

(xi) The 2 Petitioners of CWJC No. 1879 of 2004 have prayed for quashing of order contained in memo No. 10 dated 5.1.2004 (Annexure-19), issued under the signature of the Secretary, Department of Science & Technology, Government of Bihar, whereby, the recommendations of the Committee, which gave these Petitioners opportunity of hearing as per the order passed by this Court in LPA No. 1534 of 2000, have been accepted and the claims of the two Petitioners for their absorption have been rejected. They have also prayed for issuance of a writ in the nature of writ of mandamus commanding the Respondents to reinstate them w.e.f. 31.1.1991 with all consequential benefits.

2. FOUNDATIONAL FACTS (as appearing from the records)

(i) Magadh Engineering College (herein after referred to as "the College") was established in Gaya town under the Bihar Technical Educational Trust to impart teaching up to B. Sc. level in various disciplines of engineering stream. The College started functioning with admissions of the first batch of students in 1980 itself. By 1986 the total number of students in the College, studying in different batches, swelled to over 1000. In the College, to manage the departments, laboratories and other activities, Petitioners were appointed on class III and IV posts by the Managing Committee of the College during the period 1980 to 1986.

(ii) In the meanwhile, to regulate and control the running of technical institutions

in private sector, State Government came up with an Ordinance, namely, the Bihar Engineering and Pharmacy Educational Institution (Regulation and Control) Ordinance, 1982, which was soon replaced by Bihar Act No. 63 of 1982. This Act provided for permission, recognition, affiliation and ancillary measures for regulation and control in the matters concerning opening and running of such institutions. This Act also empowered the State Government to get an institution inspected for the purposes of measures to be taken under the Act. Hence, under the provisions of the Act, a committee was constituted by the Government on 7.3.1984 to consider the cases of existing institutions for the purposes of measures which may be taken in their respect as may be necessary. The Committee submitted its report, and as per its recommendations, Government took decision to takeover the College, along with two other engineering colleges, namely, Indian College of Engineering, Motihari (for short "ICE") and Jagannath Mishra Institute of Technology (for short "JMIT"), Darbhanga. Accordingly, the Bihar Private Engineering College (Taking Over) Ordinance, 1986 (Ordinance 37/1986) (ultimately replaced by Act 4 of 1991) was issued for takeover of the three Colleges. With the promulgation of the Ordinance, the three Colleges thus stood transferred and vested in State Bihar with effect from 9.12.1986 with all their assets and properties but free from all encumbrances. As a consequence of the takeover of the Colleges, by virtue of the provisions of Sub-section (1) of Section 5, the employees working therein ceased to be the employees of the Engineering Colleges and became ad-hoc employees in the respective Colleges, pending final decision of the State Government in their respect in terms of Sub-section (3). Thereafter, in exercise of the powers in terms of Sub-section (2) of the said Section 5 of the Ordinance, by a Resolution No. 1063 dated 24.4.1987, State Government constituted a Screening Committee (the 1st Committee) for screening of eligibility of the teaching and non-teaching staff, working in the three Colleges at the time of their takeover, for the purposes of takeover of their services and absorb them into Government service.

(iii) The Screening Committee (the 1st Committee), after completion of its work, finally submitted its report on 11.10.1988 (Annexure-1 with CWJC No. 10788/03), in respect of all the three Colleges, with separate appendixes in respect of separate categories of employees of each of the College. So far as present College is concerned, 342 non-teaching employees were screened by the Committee. Appendixes III to VII contained the list of its non-teaching employees, out of which Appendix III contained the name of one administrative officer and 70 clerks of the College who were found eligible for absorption by the Committee; Appendix IV contained the names of 41 technical staff of the College who were also found eligible for absorption by the Committee and Appendix V contained the names of 148 fourth grade employees of the College who were also found eligible for absorption by the Committee. It is the case of the Petitioners that name of each of them finds place in either of these three lists, as they were found eligible by the Screening Committee for absorption. Appendix VI contained the names of 19 employees of the College who were found working

against redundant posts with specific comment of Committee against each name and Appendix VII contained the names of 29 employees of the College who were found over age. Thus, Appendix III, IV & V taken together, the Screening Committee cleared 260 names, out of 342 screened, for absorption of their service in Government service, which included, as per their case, all the Petitioners.

(iv) Appendix XX of the report contained a proposed staffing pattern for the three Colleges, recommended by the Committee on the basis of intake of 120 students per year for all categories of staff, in view of the State Government Resolution contained in memo No. 2819 dated 8.9.1988. By this Resolution, which was issued before the Committee had submitted the report, the State Government had laid down the different disciplines of engineering stream to be taught in the each College and had fixed the intake limits of students in each discipline. As per this Resolution, 4 different disciplines each, of engineering stream, was to be taught in each college, limiting the total intake of students in all the disciplines taken together to 120 per year in each College. As per the Resolution, the new disciplines and seat limits was to come into effect only after the students, already admitted in the Colleges up to immediately before takeover of the Colleges, appeared in the final year examination and, in the meanwhile, no new admissions was to be taken in any disciplines till then. It was noticed in the report that when the Committee held its final meeting on 9.6.1988 and decided to submit its report on the basis of available materials with the Committee without holding any further meeting, there was no material available with the Committee for its guidance for proposing staffing pattern. Therefore, in the said proposed staffing pattern, contained in Appendix XX, teacher -student ratio was fixed at 1:8, as per the All India Council for Technical Education (herein after to referred to as "AICTE") norms, and staffing pattern for non-teaching staff was proposed on the pattern of B.I.T. Sindri, a Government Engineering College. In this manner, the Committee recommended sanction of posts in each College for 60 teaching, 5 gazetted staff of different category, 26 technical supporting staff, 12 non-technical supporting staff and 96 class IV staff.

(v) On receipt of the said report of the Screening Committee (the 1st Committee), memorandum was prepared in the light of its recommendations and the matter was placed before the Cabinet on 27.12.1989. As a follow up to the decisions taken by the Cabinet in the meeting, two resolutions were issued on 15.1.1990. By Resolution No. 96 a new Screening Committee (herein after to be referred to as "the 2nd Committee") was constituted for re-screening of those teaching and non-teaching staff who were found unfit by the earlier Committee (the 1st Committee) and also those teaching and non-teaching staff who were found fit but surplus due to unavailability of posts. As per the Cabinet decision, two further points were added, to the earlier three fixed points contained in resolution by which the 1st Committee was set up, namely (A) The services of those teaching and non-teaching staff must be regularized if they possess the requisite qualification, and (B) The service rendered by them before taking over

of the Institution must be considered sympathetically. The Screening Committee, so constituted, was required to submit its report in 30 days. By the next resolution, i.e. Resolution No. 97, which was also issued in terms of the Cabinet decision of the same date, Government laid down staffing pattern for the three Colleges each, as per AICTE norms, for teaching as well as non-teaching staff. In this staffing pattern, Government sanctioned 53 posts of teaching and administrative staff, 53 posts of technical supporting staff, 23 posts of non-technical supporting staff and 41 posts of grade IV staff. After laying down the staffing pattern thus, the cases of non-teaching employees of the College were considered in the light of the recommendations of the Screening Committee (the 1st Committee), and as per the AICTE norms, in exercise of powers in terms of Sub-section (3) of Section 5 of the Ordinance, 1990, by notifications contained in memo No. 321 dated 31.1.1991 and memo No. 323 dated 3.7.1991 (and also memo No. 322) services of those employees, who were found surplus or ineligible, were dispensed with, which included all Petitioners and others. This occasioned filing of first batch of writ applications in this Court by some of the affected persons, led by CWJC No. 759/92 Sadanand Jha and Ors. v. State of Bihar and Ors., which were heard by a Division Bench and dismissed by a common judgment dated 20.4.1993. SL Ps were preferred against this judgment before the Apex Court by some of the affected parties, which were also dismissed.

3. FURTHER DEVELOPMENTS (as collected from the records)

(i) Whereas some of the employees had straightaway moved this Court by filing writ applications, many employees were agitating for their claim for absorption in Government service before the department itself. Cases of some of the employees were considered and in respect of 6 of them, in partial modification of notification contained in memo No. 321 dated 31.1.1991, by notification contained in memo No. 1264 dated 29.4.1993, orders of their absorption in Government service and posting them in different institutions were issued. However, as Department was receiving large number of representations/complaints from the erstwhile employees of the Colleges whose services had been dispensed with, by notification No. 3273 dated 22.12.1994, a 4 member committee was constituted to look into the grievances of employees, individually, and submit its report. In the meanwhile, one writ application, filed by 44 Petitioners in 1991 itself (Shubhankar Jha & ors), was heard by a learned Single Judge and was allowed by judgment dated 19.10.1995, and the orders of termination of Petitioners which was passed on the ground of they being overage, was set aside. One batch of 15 writ applications, also filed in 1991 itself (Raghunath Singh and Ors.), was heard by another learned Single Judge and was allowed by judgment dated 6.5.1996 and the termination orders were set aside on the ground of violation of Principles of Natural Justice, with liberty to the Respondents to take fresh decision in terms of Section 5(3) of the Act within 4 months, after giving individual notices to the Petitioners, failing which they were to be restored with all consequential benefits. This order required fresh screening

of individual cases of the concerned Petitioners within the time limit laid down by the Court. Hence, by resolution contained in memo No. 956 dated 20.5.1996 a Committee was constituted (herein after to be referred to as "the 3rd Committee"). This Committee met on 8.8.1996 and resolved that, since this Committee was of lower strength (of lesser number of members), than the 1st Committee, it would not be proper for it to review the recommendations of the earlier High Powered Committee (the 1st Committee). It therefore recommended the State Government to constitute a High Power Committee. This request made by this Committee was turned down by the Government. It felt that, in view the fact that the members of the earlier Committee (the 1st Committee) had since superannuated or transferred, and in the light of orders of the Court in CWJC No. 1316 of 1991 (Raghunath Singh) a screening committee had to be constituted immediately. Hence, by orders contained in memo No. 1706 dated 3.9.1996, a new Screening Committee of 6 members (herein after referred to as "the 4th Committee") was constituted which was directed to submit its report, considering the guidelines to earlier High Power Committee (the 1st Committee) and the relevant orders of the Court and the records, after giving opportunity of hearing to the affected parties, within the time limit fixed. This Committee held its first sitting on 6.9.1996. The Committee gave notice to 480 claimants, out of which 313 appeared before it. After deliberations, the Committee came to the conclusion that no new material, than those which were available at the time of earlier hearing, had come to light so as to affect the earlier decision taken in respect of the concerned employees. Hence, the Committee submitted its report on 16.1.1997, recommending that there was no justification for re-consideration of decisions taken earlier. However, as 4 month period had elapsed and no decision had been taken in terms of the judgment dated 6.5.1996 (Raghunath Singh), services of Petitioners of all the 15 writ applications (136 in number) were restored on ad-hoc basis in the respective colleges through order of the department contained in memo No. 1551 dated 19.7.1997. State Government finally decided to file appeals against the said judgment. Accordingly two appeals were filed, but with a delay of 691 days and 679 days. The same were, therefore, dismissed on the ground of delay itself. The SL Ps filed before the Hon'ble Supreme Court by the State Government in the matter were also dismissed in limine. Hence, the services of those Petitioners were finally absorbed.

(ii) In the circumstances, being emboldened by the success of Petitioners covered by the judgment in the case Raghunath Singh and others, who, otherwise, had not been found fit for absorption on different counts, whereas the Petitioners of C.W.J.C. No. 10788 of 2003 and others who had been found fit but surplus by notification No. 321 dated 31.1.1991, filed different writ applications. While, out of ten writ application under consideration, eight remained pending since 1996-97, the earlier writ application of the Petitioners of CWJC No. 10788 of 2003 was dismissed, along with some other writ applications, by a learned Single Judge by judgment and order dated 24.8.2000, relying on the judgments of Division Benches in Sadanand Jha and Ram Niwas Kumar Sharma and

disagreeing with judgment of learned Single Judge in Raghunath Singh. Appeals preferred by present Petitioners of the said writ application, and some Petitioners of analogous writ applications dismissed by same order dated 24.8.2000, were also dismissed in the light of the said two judgments of the Division Benches. Petitioners, thereafter, preferred appeals before Apex Court. The appeals were finally heard in a batch led by C.A. No. 2542 of 2002 and, by order dated 4.2.2003, were disposed of in the light of submissions of learned senior counsel for Appellants (present Petitioners), that the Appellants will be satisfied if they were treated as per paragraph 42 of the judgment of learned Single Judge in Raghunath Singh case, which was agreed upon by the learned Counsel for the State of Bihar on the ground that the Appellants had not challenged the staffing pattern. Apex Court extracted the said paragraph 42 of the judgment of learned Single Judge of this Court in Raghunath Singh and held it as its own order with only modification that the time limit of 4 months for passing a fresh order was extended to 6 months.

(iii) Accordingly, a Departmental Committee was set up by order contained in memo No. 540 dated 25.4.2003 (this memo is not on record) and individual notices were issued to Petitioners and Ors. (121 in number), inviting them for personal hearing before the Committee on different dates. The hearing commenced on 28.5.2003 and ended on 5.6.2003, in which 117 Petitioners appeared. The Committee, thereafter, submitted its report on 18.6.2003 in which, after noticing the individual cases, it came to the conclusion, inter alia, that the Apex Court had not passed any order for absorption of the Petitioners and that the writ Petitioners of CWJC No. 1316 of 1991 & other 14 cases were not absorbed on merit, rather they got the advantage of the time limit fixed by the Court for individual hearing, which could not be complied with. Therefore the same could not be set up as a ground to claim regularization. The Committee also found that the staffing pattern laid for the colleges was held correct by this Court and the Apex Court, which the Petitioners have never challenged. Therefore, in view of the said staffing pattern, all the 117 employees were beyond the sanctioned strength. Hence the Committee concluded that no case was made out for absorption of the said 117 employees. On receipt of the said report, and in the light of its findings, order contained in memo No. 1242 dated 14.8.2003 was issued rejecting the claim of all the present writ Petitioners of CWJC No. 10788 of 2003 and others for their absorption, which order, along with the said report is under challenge herein.

(iv) The two Petitioners of CWJC No. 1879 of 2004, whose writ application had been dismissed by common judgment and order dated 24.8.2000, had preferred appeal separately in 2000 itself. Their appeal was taken up on 24.7.2003 and, in the light of Apex Court order dated 4.3.2003 and in terms thereof, the appeal was disposed of. Accordingly, notices were given to these two Petitioners also, and they were also heard by the said Committee which turned down their cases also, as a consequence of which order contained in memo No. 10 dated 5.1.2004 was issued rejecting their claim for absorption, which order is under challenge in

this writ application.

4. GOVERNMENT LETTERS/CIRCULARS/RESOLUTIONS etc.

as available on the records of the cases

(i) Report of Screening Committee (the 1st Committee) dated 11.10.1988, constituted u/s 5(2) of the Ordinance by Resolution No. 1063 dated 24.4.1987, and its appendixes (the said Resolution is not on record but was Appendix-XXI with the report).

Copy of this report and/or its appendixes are on records of CWJC No. 10788 of 2003 as Annexures-1 & 2 with the writ application, as Annexure-D with 2nd Supplementary counter affidavit of the State filed on 13.11.09, as Annexure-14 with 2nd Supplementary Affidavit of the Petitioners filed on 20.11.09; on the records of CWJC No. 11161/96 as Annexures 2,3 & 4; on the records of CWJC No. 11167/96 as Annexure-3; on the records of CWJC No. 12606/96 as Annexure-4; on the records of CWJC No. 8847/96 as Annexures-5 & 8; on the records of CWJC No. 1879/04 as Annexures 1,2 & 3; on the records of CWJC No. 8843/96 as Annexure-1; on the records of CWJC No. 4242/97 as Annexures 6, 6/A & 7 and on the records of CWJC No. 8844/96 as Annexures 5,5/A & 6.

This report notices the background facts, the steps taken by the Committee, the points referred to it for consideration, the methodology decided for proceeding in the matter, steps taken by it for scrutiny and its recommendations, and its final conclusions and recommendations. The list of teaching and non-teaching staff, put under different categories with its recommendations, the facts and figures in respect of the three colleges, as well as other relevant documents, were attached to the report in the form of 21 appendixes. In respect of Magadh Engineering College, Gaya, the list of non-teaching employees, falling in different categories, were contained in Appendix III to VII.

(ii) Resolution contained in memo No. 96 dated 15.1.1990.

Copy of this resolution is on the records of CWJC No. 11161/96 as Annexure-8; on the records of CWJC No. 8847/96 as Annexure-7; on the records of CWJC No. 8843/96 as Annexure-8 and on the records of CWJC No. 8844/96 as Annexure-10.

In this resolution, as per the State Government decision, constitution of a Screening Committee, (the 2nd Committee) for re-screening of those teachers and non-teaching staffs who were not found fit by the committee (the 1st Committee) and those teachers and non-teaching staffs who were found fit but surplus due to unavailability of posts, was notified. By this resolution, on the basis of cabinet decision, two points were added to the earlier points of reference. The points were, (A) the services of those teachers and nonteaching staffs must be regularized if they possessed the requisite qualification and (B) the services rendered by them before taking over of the Institution must be considered sympathetically.

(iii) Resolution contained in memo No. 97 dated 15.1.1990.

Copy of this resolution is on the records of CWJC No. 10788/03 as Annexure-4 and with the Supplementary counter affidavit of State filed on 11.9.2009 as Annexure-A.

By this resolution, on the basis of a decision taken by the Cabinet on 27.12.1989, the staffing pattern of teaching and non-teaching employees for the three colleges was determined in the light of the norms laid down by AICTE.

(iv) Notification No. 321 dated 31.1.1991 issued in exercise of the powers u/s 5(3) of the Ordinance.

Copy of this notification is on the records of CWJC No. 10788/03 as Annexure-3; on the records of CWJC No. 11161/96 as Annexure-5; on the records of CWJC No. 11167/96 as Annexure-4; on the records of CWJC No. 4063/97 as Annexure-6; on the records of CWJC No. 1879/04 as Annexure-4; on the records of CWJC No. 4242/97 as Annexure-4 and on the records of CWJC No. 8844/96 as Annexure-7.

By this notification, applying the staffing pattern laid down by the AICTE, the services of the Petitioners and others were terminated with effect from issue of the notification, on account of being surplus.

(v) Notification No. 323 dated 3.7.1991 issued in exercise of the powers u/s 5(3) of the Ordinance.

Copy of this notification is on the records of CWJC No. 12606/96 as Annexure-5 and on the records of CWJC No. 8843/96 as Annexure-2 and is under challenge in these two writ applications.

By this notification, on the basis of eligibility and conditions laid down by the AICTE and in the light of the eligibility and conditions of the State Government, and upon examining each case on its own merits, the services of the persons named in the notification were terminated.

(vi) Notification contained in memo No. 1264 dated 29.4.1993 issued in exercise of powers u/s 5(3) of the Act.

Copy of this notification is on the records of CWJC No. 4242/97 as Annexure-15.

By this notification, in partial modification of notification No. 321 dated 31.1.1991, exercising power u/s 5(3) of the Act, services of 6 non-teaching employees were absorbed against posts available in different institutions.

(vii) Order of the Department contained in memo No. 3273 dated 22.12.1994.

Copy of this order is on the records of CWJC No. 4242/97 as Annexure-14.

By this order, a committee of four members was constituted to consider the representations filed by individuals in matters of notifications issued by the

Government and to submit report to the Government.

(viii) Office order of the Department contained in memo No. 1706 dated 3.9.1996.

Copy of this office order is on the records of CWJC No. 4063/97 as Annexure-1; on the records of CWJC No. 1879/04 as Annexure-9 and on the records of CWJC No. 4242/97 as Annexure-1.

By this order, in the light of superannuation of some of the members of the Screening Committee (the 1st Committee) and in the light of orders passed in CWJC No. 1316/91, 1172/91 and 1288/91, a new Screening Committee of 6 members (the 4th Committee) was constituted which was directed to submit its recommendation within the time frame, keeping in view the guidelines issued to the earlier Committee, in the light of directions of this Court and after considering the documents and after giving opportunity of hearing to the parties.

(ix) Report of the Screening Committee constituted by orders contained in memo No. 1706 dated 3.9.1996 (the 4th Committee).

Copy of this report is on the records of CWJC No. 1879/04 as Annexure-12.

After re-notification, this Committee called for representations, considered the documents and submitted its report on 19.1.1997 with the finding that no new material, than those which were available before the earlier Committee (the 1st Committee) to justify reconsideration of earlier decisions taken in respect of the concerned employees.

(x) Order of the Department contained in memo No. 1551 dated 19.7.1997.

Copy of this order is on the records of CWJC No. 10788/03 as Annexure-5.

By this order Petitioners of CWJC No. 1316/91 and other analogous cases were restored in service on provisional basis in terms of the common judgment passed in the batch of cases on 6.5.1996.

(xi) Office order contained in memo No. 1609_dated 28.7.1997

Copy of this officer order is on the records of CWJC No. 10788/03 as Annexure-17.

This is an office order of the Department restoring the services of the Petitioners of CWJC No. 822 of 1992 on ad-hoc basis in the light of the orders passed in the said writ application on 16.7.1996.

(xii) Letter dated 17.5.2003 of the Department.

Copy of this letter is on the records of CWJC No. 10788/03 as Annexure-9.

This letter is a sample of notice issued to all the Petitioners in compliance to the orders passed by the Apex Court in Civil appeal No. 2542 of 2002, providing them opportunity to appear before the Committee on different dates.

(xiii) Report of the Departmental Committee dated 18.6.2003.

Copy of this report is on the records of CWJC No. 10788/03 as Annexure-10.

The committee found that the Petitioners of CWJC No. 1316 of 1991 (Raghunath Singh and Ors.) and other analogues cases were absorbed in Government service only because decision could not be taken in their cases within the period prescribed by the Court and, therefore, the decision of absorption of the present Petitioners cannot be taken on that basis. In the report the cases of 117 Petitioners were separately considered and were rejected. It was noticed that earlier the Screening Committee(the 1st Committee) had accepted the staffing pattern of BIT, Sindri as model and had submitted its report finding the employees fit for absorption as per the said staffing pattern and rest of employees were found surplus which was not objected to by the Petitioners (Appellants) before the Apex Court.

(xiv) Office order contained in memo No. 1242 dated 14.8.2003.

Copy of this office order is on the records of CWJC No. 10788/03 as Annexure-11.

Accordingly, as per the report of the Departmental Committee, this impugned office order was issued by which the claims of all the writ Petitioners were rejected.

5. OTHER DOCUMENTS (as available of record)

(i) Annexure-12 in CWJC No. 10788 of 2003 is a copy of a letter dated 15.8.2003 of the State Minister, Department of Science and Technology, addressed to the Secretary of the Department, wherein the State Minister had asked the Secretary not to issue any order as there was some anomaly in the decision which he wanted to discuss with the Minister of the Department immediately upon his arrival in Patna.

(ii) Annexure-13 with the supplementary affidavit on behalf of the Petitioner filed in CWJC No. 10788 of 2003 on 27.8.2009 is photo copy of few pages of notings of the file in which the cases of the 117 Petitioners were being considered in compliance to the orders passed by the Apex Court. Notings of the file shows that as late as in 2007-08 proposals were being made for absorption of these surplus employees (Petitioners) in new engineering colleges.

(iii)Annexures B and B/1 with the second supplementary counter affidavit on behalf of the Respondent State filed on 12.10.2009 in CWJC No. 10788 of 2003 are the norms and standards of staffing pattern of AICTE and of BIT Sindri respectively.

(iv) In CWJC No. 8843 of 1996, Annexure-3, 4 and 5 are orders of appointment and confirmation of Petitioner by the Managing Committee of the College and Annexure 6 is Notification No. 3264 dated 28.12.1991 terminating the services of Petitioner and others.

(v) In CWJC No. 8844 of 1996, Annexures-1, 1/A, 2, 2/A are documents relating to appointment and confirmation of the two Petitioners by the Managing Committee of the College and Annexure-3 is a duty chart of one of the Petitioners in the election. Annexure-A with CA filed in the case is a letter from the chancellor's secretariat to the VC of Bihar University dated 6.5.1992 containing some general observations in respect of interpretation of provision of law or statute.

(vi) In CWJC No. 8847 of 1996, Annexure-1 series and 2 series are the orders of appointment and confirmation of Petitioners by the Managing Committee.

(vii) In CWJC 11161 of 1996, Annexure-1 series are five office orders of appointment of five Petitioners in the College by the Managing Committee out of 8 Petitioners before this Court.

(viii) In CWJC No. 11167 of 1996, Annexures-1 and 1/1 are office orders of appointment of two Petitioners in the College and Annexure-2 series are orders of confirmation of their service by the Managing Committee.

(ix) In CWJC No. 12606 of 1996, Annexure-1 is the office order of the College confirming the services of the Petitioner along with others, Annexure-2 and 2/A are orders of his transfer and posting and Annexure-3 is his promotion orders, issued under the orders of the Managing Committee of the College.

(x) In CWJC No. 4063 of 1997, Annexure-4 and 4/A are the orders of the college by the Managing Committee in respect of appointments of the Petitioners and Annexure- 5 is the confirmation order and Annexure-8 is a notice dated 10.12.1996 issued to Petitioner No. 2 by the Screening Committee.

(xi) In CWJC No. 4242 of 1997, Annexure-2 dated 29.8.1996 and Annexure 8 dated 10.12.1996 are notices to one of the four Petitioners by the 4th Committee, giving him opportunity of hearing and Annexure-9 and 9/A are its reply; Annexure 5 is a letter of the in-charge Principal of the College dated 12.12.1991 to the Director, Science and Technology Department and Annexures-10, 10/A, 10/B, 11, 11/A, 11/B, 12, 12/A, 13, 13/A are orders of appointment and conformation of the Petitioners by the Managing Committee of the College.

(xii) In CWJC No. 1879 of 2004, Annexure-10 & 14 are notices dated 18.9.96 by the 4th Committee, inviting Petitioners for appearance in hearing, issued in terms of order passed in CWJC 1316 of 1991 & other analogous cases; Annexure 17 and 18 are two detailed representations of Petitioner No. 1 with all relevant enclosures and Annexure 19 is the order of the Department contained in memo No. 10 dated 5.1.2004 in respect of consideration of the cases of two Petitioners in the light of order passed in LPA No. 1534 of 2000 and rejecting the same.

(xiii) Annexure 11 in CWJC No. 1879 of 2004 is the notings in a file between 11.4.1997 and ending with the note of the chief secretary dated 12.5.1997 and initial of chief minister. These notings dealt with the cases of Petitioners covered

by the judgment in the case of Raghunath Singh and Ors. (CWJC No. 1316 of 1991), in the light of the judgment passed in their favour.

6. EARLIER DECISIONS/ORDERS (on record/referred by the parties).

(i) First decision in the matter is by a Division Bench of this Court dated 20.4.1993 in the case of Sadanand Jha and Ors. v. State and Ors. CWJC No. 759/92 and other 5 writ applications (reported in 1993(2) PLJR 272). In the first writ application (C.W.J.C. No. 759/92) there were 92 Petitioners and in the other 5 writ applications there were altogether 10 Petitioners. The Petitioners of the first case had challenged the Notification No. 321 dated 31.1.1991 of the Government by which their services were terminated on the ground of they being excess of the sanctioned strength in the College on the basis of staffing pattern. The grievance of the Petitioners was that, in spite of being found fit for consideration for absorption, they were terminated as they were shown surplus due to introduction of new staffing pattern which reduced the required strength of class-III and class-IV employees in the College. The Petitioners of other five writ applications had challenged another notification of their termination dated 28.12.1991 terminating their services on the ground of their ineligibility and unsuitability.

Learned Counsel, who appeared in the case for the Petitioners, did not challenge the resolution contained in memo No. 2819 dated 8.9.1988, by which the State Government had laid down the disciplines and intake strength of students per year in each discipline for the Colleges. The only stand which was taken by learned Counsel before the Court was that the services of the Petitioners and others were terminated without determining the staffing pattern. The Court considered the Government notification and in particular the memorandum dated 27.12.1989 placed before the Cabinet and came to the conclusion that the decision to terminate the surplus staff was validly taken after determining the strength of the staff and the staffing pattern as required (in view of intake strength of students fixed) in terms of Section 5(3) of the Ordinance (now the Act) and the said determination was based on relevant materials which could not be said to be arbitrary, unjust or unreasonable. Therefore the writ applications were dismissed.

(ii) The next decision in the matter is also of this Court by a learned Single Judge (Homochaudhuri, J.) dated 19.10.1995 in the case of State of Haryana Vs. Manoj Kumar, . In this writ application 44 non-teaching employees of the present college as well as JMIT, Darbhanga were before the Court and they had challenged the Notification No. 323 dated 3.7.1991 (wrongly typed as 31.7.1991 in the judgment) by which on the ground of their being over age on the dates of their respective appointments they were sought to be terminated.

The learned Single Judge found that it was an admitted position that the Petitioners were qualified for their respective posts and they were appointed by the competent authority in the college and many of them were confirmed also.

Hence the Court held that it could be presumed that their age was condoned. It was also noticed by the Court that subsequently Government had enhanced the upper age limit for appointment on the posts in question and most of the Petitioners had come within the enhanced age limit. Hence, the order terminating their services was quashed and the Respondents were directed to reinstate them. Copy of the said judgment from a law journal is also Annexure-6 with CWJC No. 11167 of 1996.

(iii) The next decision in the matter is also by a learned Single Judge (A.K. Ganguly, J) of this Court dated 6.5.1996 in the case of Raghunath Singh and Ors. v. State of Bihar and Ors. CWJC No. 1316 of 1991 and other 14 writ applications (reported in 1996 (2) PLJR 20. In this batch of writ applications, the Petitioners had challenged the notifications of termination of their services which were issued on various grounds. Some of the Petitioners were terminated on the ground of being over age; some of them were terminated on the ground of being surplus; some of them were terminated on the ground of being not qualified; some of them were terminated on the ground of their names having been inserted in the list of employees of the Colleges after announcement of take over of the college and some of them were terminated on the ground of having qualification in subjects not being taught in the college.

Learned Single Judge examined the wordings of Section 5(3) of the Act and held that the expression "on the merit of each case" required compliance of Rule of audi alteram partem in the case of each individual separately before terminating his service. The doctrine of reading down was applied by the learned single Judge to read this requirement in the said Sub-section (3) of Section 5. As the records established that this requirement was not complied with before issuing the impugned letters of termination, the Court set aside the same and directed the Respondents to give each Petitioner an opportunity of hearing and thereafter take a decision in terms of Section 5 (3) of the Act within four months, failing which the Petitioners were held entitled for reinstatement upon expiry of four months with benefits of continuity of service but without back wages.

A copy of the said judgment from a law journal is also Annexure-6 with CWJC No. 11161 of 1996, Annexure-5 with CWJC No. 11167 of 1996 and Annexure-7 with CWJC No. 8843 of 1996. A copy of the same is also Annexure-6 with CWJC No. 8847 of 1996 and Annexure-8 with CWJC No. 8844 of 1996.

(iv) A short Division Bench order passed in CWJC No. 822 of 1992 dated 10.7.1996 is annexure-16 along with the second supplementary affidavit filed on behalf of the Petitioner on 16.11.2009 in CWJC No. 10788 of 2003.

By this order, in view of the joint submissions of counsels for the parties that the case was covered by the judgment passed in Raghunath Singh (Para6 (iii)above), the writ application was disposed of directing that paragraph 41 and 42 of the said judgment shall apply in the case of Petitioners also. A copy of the said order is also Annexure-7 with CWJC No. 4063 of 1997 and Annexure-6 with CWJC No.

1879 of 2004.

(v) Annexure-8 series with CWJC No. 1879 of 2004 are two interim short orders dated 31.10.1996 & 22.11.96 passed by a Division Bench in LP As.

By the first order LPA No. 1661 of 1995 was adjourned on 31.10.96 and by the second order dated 22.11.96 the said LPA along with LPA No. 1637 of 1995 was dismissed as withdrawn in the light of submissions of learned state counsel that a Screening Committee has been constituted which would consider the cases of the Appellants.

(vi) Judgments of two Division Benches in LPA No. 1357 of 2000 Shashi Nath Jha and Ors. v. State of Bihar and Ors. dated 18.10.2000 and another passed in LPA No. 1662 Ram Niwas Kumar Sharma and Ors. and LPA No. 1696 of 1995 Dilip Kumar and Ors. dated 11.5.2000 are Annexure-C series along with second supplementary counter affidavit on behalf of the Respondent State filed on 12.10.2009 in CWJC No. 10788 of 2003.

The Division Bench in the case of Ram Niwas Kumar Sharma and Ors. found that the Single Bench judgment in the case of Raghunath Singh (Para-6(iii)above) was not "affirmed" or "approved" by the Appeal Bench or by the Supreme Court. The Division Bench found that against the judgment of in Raghunath Singh's case (Para-6(iii)above) appeals were preferred after delay of 691 days and 679 days and therefore, the appeals were dismissed. The SLP preferred before the Apex Court was also dismissed in limine. It also noticed, as pointed out by learned Counsel for the Appellants, another Division Bench order, passed in CWJC No. 822 of 1992 on 16.7.1996 (Para-6(iv) above), which, as noticed by the Division Bench, was disposed of only with consent of the parties in terms of orders passed in Raghunath Singh (Para-6(iii)above). Therefore, the Division Bench did not accept the said order of the Division Bench also as affirming the judgment of the learned Single Judge in Raghunath Singh (Para-6 (iii)above). Hence, it concluded that the decision in Raghunath Singh (Para-6(iii)above) had to be considered independently without any support from any other Division Bench of the Court or from the Supreme Court. Thereafter, it proceeded to consider the decision of Raghuanth Singh (Para-6(iii)above) and found that the decision of Division Bench in Sadanand Jha (Para-6 (i)above) was a binding precedent for the learned Single Judge. It also found that distinction made by the learned Single Judge (Raghuanth Singh) from the judgment of the Division Bench (Sadanand Jha) was not correct as it found that it was plain and clear that the Division Bench (Sadanand Jha) had taken the view that principles of natural justice had no application in the facts and circumstances of the case. The decision of learned Single Judge in the case of Subhankar Jha (Para6 (ii)above) was also considered by the Division Bench and not accepted as prudent. It finally concluded to agree with the decision of Division Bench in Sadanand Jha (Para-6(i)above) and did not accept the view of learned Single Judges in the cases of Raghunath Singh (Para-6(iii)above) and Subhankar Jha (Para-6(ii)above). The appeals were accordingly dismissed.

The Division Bench in LPA No. 1357 of 2000 (Shashi Nath Jha) noticed and followed the said Division Benches in the case of Sadanand Jha (Para-6(i)above) and Ram Niwas Kumar Sharma (Para-6(vii)above) and dismissed the appeal.

(vii) Another decision dated 24.8.2000 of this Court by a learned Single Judge is Annexure-6 with CWJC No. 10788 of 2003. This order of the Court was passed in a batch of cases led by CWJC No. 8845 of 1996 preferred by class-III and class-IV employees of the three colleges which included some of the present Petitioners also.

In the batch of cases orders declaring the some of the Petitioners as surplus and orders rejecting the cases of some of the Petitioners of the batch of Raghunath Singh (supra) again, upon remand, were under challenge. The basic challenge by the Petitioners in all these cases were against the notification dated 31.1.1991 by which the services of the Petitioners were terminated. The ground of challenge was that the initial order of termination of the Petitioners was issued contrary to the report submitted by the Screening Committee and contrary to Appendix-III and X of the said report which was adopted by the newly constituted Screening Committee also, without applying its mind. The contention on behalf of the Petitioners was that the screening committee should have adopted staffing pattern of BIT, Sindri for each and every college in which event 296 posts for teaching and non-teaching staff should have been allowed for each of the three taken over colleges.

The Court found that the same notification dated 31.1.1991 was under challenge before the Division Bench in the case of Sadanand Jha and others (Para-6 (i)above) wherein the question with regards to validity of adoption of staffing pattern was also discussed and decided against the surplus employees. The Court noticed that the judgment in the case of Raghunath Singh (Para-6 (iii)above), which was heavily relied upon by the Petitioners in this case, was noticed by another Division Bench in the case of Ram Niwas Kumar Sharma and others ((Para-6(vi)above), and found that the decision of the Court in the case of Raghunath Singh (Para-6 (iii)above) stood already reversed in Ram Niwas Kumar Sharma. Therefore, following the Division Bench judgments in Sadanand Jha (Para-6(i)above) and Ram Niwas Kumar Sharma (Para-6(vi)above) learned Single Judge dismissed the writ applications with observations that in future employment the Petitioners may be given weightage/preference over outsiders. Copy of this judgment is also Annexure-15 with CWJC No. 1879 of 2004.

(viii) Two Division Bench orders of this Court passed in LPA No. 1496 of 2000 on 14.3.2001 and LPA Nos. 1393 and 1395 of 2000 on 23.10.2000, which were preferred by some of the Petitioners of analogous cases (including some of the present Petitioners) which were heard and disposed of along with CWJC No. 8845 of 1996 as mentioned above, are Annexure 7 series with CWJC No. 10788 of 2003.

In the short orders the Division Benches found that the learned single judge had

dismissed the writ application in view of the judgments of earlier two Division Benches which had upheld the notification of State Government dated 31.1.1991. Hence the Division Benches did not find merit in the appeals and the same were dismissed. The Petitioners of the present case, against the orders passed by the Division Benches in their LP As, preferred appeals before the Apex Court.

(ix) Copy of order dated 4.3.2003 passed by the Apex Court in the batch of appeals led by Civil Appeal No. 2542 of 2002 of the present Petitioners is Annexure-9 in CWJC No. 10788 of 2003.

Before the Apex Court, on behalf of the present Petitioners, the only submission advanced by the learned Senior Counsel was that the order of learned Single Judge passed in the case of Raghunath Singh (Para-6 (iii)above) had attained finality and therefore similar treatment should be meted out to the Appellants (present Petitioners) also. It was submitted that the Appellants (present Petitioners) would be satisfied if they are treated as per paragraph 42 of the said judgment of learned Single Judge. Learned Counsel for the State submitted that State will not have any objection to adopt the course, as directed to be adopted in the said paragraph 42 by the learned Single Judge, as the Appellants (present Petitioners) had not questioned the staffing pattern etc.

In view of such stand of the parties, the appeals were disposed of by the Apex Court by order dated 4.3.2003 in terms of the said paragraph 42 of the judgment of the learned Single Judge, which was extracted also in the order, by modifying the period of four months laid down therein to six months. A copy of the said order of the Apex Court is also annexed as Annexure-A/1 with the supplementary counter affidavit on behalf of state Respondent filed on 11.9.2009 in the same writ matter.

(x) Annexure-18 along with the second supplementary affidavit filed on behalf of the Petitioner on 16.11.2009 in CWJC No. 10788 of 2003 is an order of a Division Bench dated 24.7.2003 passed in LPA No. 1534 of 2000 Ajay Singh and Anr. v. State of Bihar and Ors. By this order the LPA was allowed and the order of the learned Single Judge was set aside noticing the order of the Apex Court passed in Civil Appeal No. 2542 of 2002 and direction was issued to consider the cases of the Petitioners in terms of the paragraph 42 of the judgment in CWJC No. 1316 of 1991 (Raghunath Singh) (Para-6(iii)above). A copy of the said order is also Annexure-16 with CWJC No. 1879 of 2004.

(xi) Annexure-7 with CWJC No. 11161 of 1996 is copy of order sheet of two dates of CWJC No. 1172 of 1991 Sanat Kumar Pandey v. State of Bihar and Ors. to show that at one stage in the case the entire records of Screening Committee was called for as prayed by the Petitioners of the case. Copy of the same is also Annexure-13 with CWJC No. 1879 of 2004 and Annexure-9 with CWJC No. 8844 of 1996.

(xii) A copy of a judgment of a learned Single Judge (Homochaudhuri, J) dated 1.11.1995 in CWJC No. 1403/91, 1457/91, 3204/91 and 6935/90 (Rakesh Kumar

Thakur and Ors. as also Taking Over Engineering Colleges Teaching and Non-teaching Associations and Ors.) is Annexure-5 with CWJC No. 1879 of 2004.

By this order, noticing the judgment in the case of Sadanand Jha (Para-6(i)above), the writ applications were dismissed.

(xiii) An order dated 10.4.1997 of a learned Single Judge (A.K. Ganguly, J)passed in CWJC No. 3751 of 1991 (Vijay Sharma) is annexed as Annexure-7 with CWJC No. 1879 of 2004.

By this order learned single judge (A.K. Ganguly, J.) allow the writ application by short order in the light of the judgment of Raghunath Singh's case (Para-6(iii)above).

7. RELEVANT LEGAL PROVISIONS

Though preparation for takeover of the three private engineering colleges, namely Magadh Engineering College, Gaya, Indian College of Engineering, Motihari and Jagannath Mishra Institute of Technology, Darbhanga, was started with submission of report of the Committee constituted under the provisions of Bihar Engineering and Pharmacy Educational Institution (Regulation and Control) Ordinance, 1982, the actual process for takeover started with promulgation of Bihar Private Engineering College (Taking Over) Ordinance, 1986 (Ordinance 37/1986). By virtue of this Ordinance, the three Colleges stood transferred and vested in State Government with effect from 9.12.1986. Follow up steps were taken under the provisions of this and the successive ordinances and finally under Act 4 of 1991, which replaced the last Ordinance.

Relevant parts of Ordinance No. 37 of 1986 are being extracted here below:

Name: THE BIHAR PRIVATE ENGINEERING COLLEGE (Taking Over) ORDINANCE, 1986

Object - To provide for taking over three Private Engineering Colleges (Indian College of Engineering, Motihari, J.M.I.T., Darbhanga and Magadh Engineering College, Gaya) to introduce and encourage courses of studies in new subjects with a view to develop engineering education in Bihar.

Preamble - WHEREAS, the State Government intends to start mainly the courses of study of new subjects of engineering in the Indian College of Engineering, Motihari, J.M.I.T., Darbhanga and Magadh Engineering College, Gaya;

AND, WHEREAS, there is no engineering institution in the region and to provide facility to technical education it is necessary to establish and run engineering institution in the area;

AND, WHEREAS, the State Government is satisfied that it would be appropriate to take over the said colleges in the public interest;

AND, WHEREAS, the Legislature of the State of Bihar is not in session;

AND, WHEREAS, the Governor of Bihar is satisfied that circumstances exist which render it necessary for him to take immediate action to provide for taking over three Private Engineering Colleges (Indian College of Engineering, Motihari, J.M.I.T., Darbhanga and Magadh Engineering College, Gaya) to introduce and encourage courses of studies in new subjects with a view to develop engineering education in Bihar;

NOW, THEREFORE, in exercise of the powers conferred by Clause (1) of Article 213 of the Constitution of India, the Governor is pleased to promulgate the following Ordinance:

1. Short title and commencement-
2. Definition-
3. Taking over of Private Engineering Colleges-
4. Power and function of the Secretary-
5. Determination of condition of Service of teachers and other categories of employees of the Private Engineering Colleges -

(1) All the staff employed in the Private Engineering College shall cease to be the employees of the concerned Private Engineering College from the date of vesting in the State Government u/s 3.

Provided that the employee shall continue to serve the concerned Private Engineering College on adhoc basis till a decision under Sub-Section 3 is taken by the State Government.

(2) The State Government shall set up one or more Committee of experts and knowledgeable person who shall examine the strength of the staff and the staffing pattern and shall further examine the biodata of each member of the teaching and other categories of employees of each of the Private Engineering Colleges and shall ascertain whether strength, staffing pattern, appointment, promotion or confirmation sanctioned and made by the managing committee of each of the Private Engineering College are proper in accordance with Universities Act, statutes, Ordinance, rules or Government direction/circular and shall take into consideration all relevant materials such as the requirements of the Private Engineering College, qualification, experience and research degree etc. and submit its report to the State Government;

(3) The State Government on receipt of report of the Committee or Committees, as the case may be, shall determine the strength of teaching and other categories of employees and the staffing pattern and shall decide in respect of each member of the teaching and other categories of employees on the merit of each case whether to absorb him in Government service or to terminate his service or to allow him to continue on adhoc basis for a fixed term or on contract and shall where necessary redetermine the rank, pay allowances and other conditions of service.

6. Audit of accounts-

7. Contract in bad faith may be cancelled or varied-

8. Determination of subjects- The State Government shall start mainly the course of study of new subjects of engineering in the Private Engineering College taken over and may continue the courses of study in other subject as per requirements.

9. Admission of students- The State Government shall have the right to determine the number of students to be admitted in the first year subject wise after taking over of the Private Engineering College.

10. Status of previously admitted students-

11. Offence and Penalty-

12. Cognizance of offence-

13. Protection of action taken under the Ordinance-

14. Overriding effect of the Ordinance-

15. Power to make rules-X x x x x

8. Considerations

(i) The challenge to the Governmental action in these cases was led by Mr. Vinod Kumar Kantha, learned senior counsel, who appeared in the first case for the Petitioners. He presented the facts of the case broadly and brought to the notice of the Court the earlier judgments/orders of the Court in matters arising out of actions taken by the Respondents at various stages pursuant to the promulgation of Ordinance No. 37 of 1986. He also brought to the notice of this Court the order of Apex Court passed in the appeals of the Petitioners (Para-6(ix)above), pursuant to which, after complying with audi alteram partem rule, Respondents have again rejected the case of the Petitioners by annexure-11, giving rise to the present writ application. A few facts which, for no lapse on his part, Mr. Kantha could not bring to the notice of this Court, was due to the reason that the same were not available on the records of the case he was appearing. However, those facts have been gathered by this Court from the records of other cases, and particularly from the records of C.W.J.C. No. 1879 of 2004, as also from the submissions of learned Counsel appearing in the case, who advanced his submissions separately but in support of submissions of Mr. Kantha. The facts and the earlier judgments/orders of this Court have been sorted out and noticed under specific heads as above and therefore, to avoid repetition, the same are not being discussed herein again.

(ii) Mr. Kantha pointed out that the Petitioners had not moved earlier to this Court as they were confident that, since they had been found as duly qualified and eligible by the Screening Committee (the 1st Committee), which had recommended their cases for absorption, they, sooner or later, would be

absorbed in the Government service. However, finding that the persons junior to them, and not found eligible at the first instance, on the strength of orders of this Court passed in the case of Shubhankar Jha (Para-6(ii)above) and Raghunath Singh (Para-6(iii)above), had entered into Government service, these Petitioners also moved this Court through C.W.J.C. No. 8845 of 1996 and other analogous cases, seeking support from the judgments of this Court in the said two cases. However, by the time their cases could be heard, judgment of the Division Bench in Ram Niwas Kumar Sharma (Para-6(vi)above) and Shashi Nath Jha (Para-6(vi)above) had come, which had found the judgments passed in Subhankar jha (Para-6(ii)above) and Raghunath Singh (Para-6(iii)above) as not correct. In the circumstances, when the writ applications of the Petitioners and others were heard, learned single Judge relied upon earlier division bench judgments in Sadanand Jha (Para-6(i)above) and subsequent judgment of Ram Niwas Kumar Sharma (Para-6(vi)above) and dismissed the writ applications by order dated 24.8.2000 (Para-6(vii)above). Some of the Petitioners from amongst the batch of writ applications moved in appeal before a Division Bench of this Court which was also dismissed by this Court by orders dated 24.3.2001 and 23.10.2000 (Para-6(viii)above). Petitioners accordingly moved Apex Court against orders passed by the Division Bench.

(iii) From the order of the Apex Court, which he placed, it appeared that, before the Apex Court learned senior counsel appearing for the Petitioners/ Appellants took the stand that the Petitioners will be satisfied if they are accorded the same treatment as meted out in the judgment rendered in Raghunath Singh's case (Para-6(iii)above). Learned Counsel for the State of Bihar agreed to the same, pointing out that the Appellants had not challenged the laying down of staffing pattern by the State Government and therefore the State would not have any objection in considering individual cases of the Petitioners after giving them opportunity in the light of staffing pattern laid down in the three Colleges by the Government, as directed by learned single Judge in paragraph 42 of Raghunath singh's case (Para-6(iii)above). Accordingly, Apex Court disposed of the appeals by order dated 4.3.2003 (Para-6(ix)above) on consent, extracting paragraph 42 of the judgment in Raghunath Singh's case in its order, with the modification that four months time fixed by learned single Judge in the said case was extended to six months in the case of the Appellants (Petitioners).

(iv) He pointed out that, in view of the said order of the Apex Court, the State Government constituted a Four Member Committee for consideration of individual cases of the Petitioners/Appellants. This Committee issued notice and gave opportunity of hearing to the individual claimants. It finally examined cases of altogether 117 candidates and submitted its report on 18.6.2003 (Para-4(xiii)above) against the Petitioners. He submitted that the Committee concluded that the benefit of judgment of learned single Judge in the case Raghunath Singh (Para-6(iii)above) could not be extended to the Petitioners as the Petitioners covered by the judgment of Raghunath Singh got into Government service due to `default" as the State Government preferred appeal

against the judgment after enormous delay which was not condoned and the SLP against the same was also dismissed in limine. The Committee also concluded that as per staffing pattern fixed by the Government, Petitioners were surplus and therefore they did not deserve to be absorbed in Government service. In view of this report of the Four Member Committee, the State Government issued Office Order (Para-4(xiii)above) formally rejecting the claims of the Petitioners which led to the filing of the present writ applications.

(v) Mr. Kantha challenged the report of the Four Member Committee and the consequent Office Order (Para- 4 (xiii)&(xiv)above), inter alia, on the ground that the Committee had taken into account irrelevant considerations for denying the claims of the Petitioners and had not taken into account relevant considerations in respect of claim of the Petitioners. He submitted that the Committee did not consider that all the Petitioners had been found by the Statutory Screening Committee (the 1st Committee) as duly appointed on the post having requisite qualification and eligibility and after following due process and many of them were confirmed also. He submitted that these findings in respect of the Petitioners, has never been doubted or questioned till today at any level in the Government. Therefore, he submitted that, it was highly arbitrary and unreasonable for the Respondents to reject the claims of the Petitioners for their absorption in regular government service holding them surplus, by relying on the prospective restructuring of the College and laying down staffing pattern requiring lesser number of employees, and dispense with their services only on that count. Mr. Kantha crystallized his submissions and formulated the following issues for consideration by this Court in the case:

1. Earlier judgment of the Division Bench in Sadanand Jha's case having travelled to Supreme Court stands obliterated and superseded by Supreme Court's decree under Article 142 which has affirmed Justice Ganguly's judgment and now that has been acted upon by the Government, giving rise to a fresh cause of action to the Petitioners in the light of fresh orders passed by the Government, as impugned.

2. Even though Justice Ganguly's judgment (in Raghunath Singh), which came three years after the Division Bench judgment (in Sadanand Jha), has not held in so many words that the Division Bench judgment is per incurium, but Justice Ganguly has distinguished that judgment and has held that the Division Bench had not addressed itself on the interpretation of Sub-section (3) of Section 5; and this was the only provision which could decide and determine the staffing pattern and as such he quashed the termination orders on two counts, namely, it suffered from violation of Principles of Natural Justice and non-application of provisions of Sub-section (3) of Section 5. The State was commanded to do both and this finding of Justice Ganguly has been affirmed by the Supreme Court with the consent of the State.

3. The Supreme Court was not in seisin with the case decided by Justice Ganguly, rather the matter before it was against the D.B'' s judgment passed by the High

Court in the case of Petitioners.

4. Even the State holds the view that the employees' absorption or removal is based only on the report and recommendation of Screening Committee; and the Screening Committee, which was statutory, had recommended for 296 posts including 65 in the share of teachers and gazetted officers.

5. By various orders of this Court, unsuitable persons are enjoying the service and the benefit of their continuance in service and Petitioners who were found suitable and recommended by the Screening Committee for absorption are on road which is unconscionable and arbitrary.

6. The notification dated 8.9.1988 can at best be a wishful desire of the Government which by any stretch of imagination cannot substantiate the statutory recommendations and in fact the impugned orders also not walking on this wishful desire of the State Government.

7. The deliberation of the Screening Committee is based on the objects of the Act and it envisages only such statutory provisions which are framed by the University or by any Ordinance or by any Government decision, and that too before the promulgation of the Ordinance which was admittedly three years before this Government notification and that is why even if this Sept."88 Government notification could have come to the notice of the Screening Committee it was not obliged to refer to it.

8. The Screening Committee report is statutory and it has to be acted upon mandatorily and therefore, the Government, even under the doctrine of eminent domain, has no jurisdiction to super impose its own findings. At best it could only refer the matter back to the Screening Committee and not doing so, it is stopped on the principles of promissory estoppel.

(vi) Learned Government Pleader No. 4 represented the Respondents and advanced his submissions in reply. He submitted that the issues raised by learned senior counsel for the Petitioners are no longer open for consideration by this Court as the same stand finally settled by the judgment of the Division Bench in the case of Sadanand Jha (Para-6(i)above) and subsequently in the case of Ram Niwas Kumar Sharma and Shashi Nath Jha (Para-6(vi)above). He submitted that all actions of the Respondents subsequent to promulgation of Ordinance No. 37 of 1986 in respect of three Colleges stand approved by the judgment of different Division Benches of this Court. He submitted that, in the circumstances, questions in respect of constitution of the Screening Committee by the Government in exercise of powers u/s 5(2) of the Ordinance, or in respect of the action of the Government in prescribing disciplines to be taught in the three Colleges and fixing limit of annual intake of the students in each discipline in each College, or in respect of the decision of the Government laying down staffing pattern in the three Colleges, or in respect of exercise of powers by the Government u/s 5(3) of the said Ordinance dispensing with the services of surplus employees of the College in view of the staffing pattern laid down and

after considering the report of the Committee are not open for consideration by this Court. He submitted that in fact learned senior counsel appearing for the Petitioners before the Apex Court did not challenge the staffing pattern laid down by the Respondents for the three Colleges and limited his prayer for equal treatment to the Appellants (Petitioners) in terms of paragraph 42 of Raghunath Singh's case (Para-6(iii)above). In paragraph 42 of Raghunath Singh's case, learned single Judge had allowed four months' time to the Respondents to issue notice to the Petitioners, hear them individually and pass fresh orders in their respect in exercise of powers u/s 5(3), failing which the Court had directed the Petitioners of the cases to be restored in service with all consequential benefits. Unfortunately, the exercise could not be completed within four months. Appeals were filed against the said judgment of learned single Judge in Raghunath Singh (Para-6(iii)above), but after enormous delay. The appeals, therefore, were dismissed on the ground of limitation only and SLP of the Government against the same were also dismissed by the Apex Court in limine. Therefore, in terms of the order of learned single Judge, Respondents had no other option than to restore the Petitioners of the cases in service, which resulted into filling up of available vacancies in the College. He submitted that, in respect of the present Petitioners, order of the Apex Court has been fully complied with, as the Petitioners have been given opportunity of hearing individually and consideration in terms of paragraph 42 of the judgment of learned single Judge in Raghunath Singh's case (Para-6(iii)above) and specific orders have been passed in their respect in exercise of powers u/s 5(3) of the Ordinance (now the Act) within the time extended by the Apex Court. He further submitted that it was not correct submission before the Apex Court that Raghunath Singh's case (Para-6 (iii)above) stood affirmed and approved by the Division Bench as well as by the Apex Court. In this respect, he pointed out that the Division Bench in the case of Ram Niwas Kumar Sharma (Para-6(vi)above) had already categorically held that the said judgment of Raghunath Singh was neither affirmed nor approved. The Division Bench also independently considered the judgment of learned single Judge in the case of Raghunath Singh(Para-6 (iii)above) as well as in the case of Subhankar Jha (Para-6 (ii)above) and found the judgment of learned single Judge in Raghunath Singh(Para-6(iii)above) as not correct and hence it finally agreed with the judgment of the Division Bench in Sadanand Jha (Para-6(i)above) and did not accept the view of learned single Judges in Raghunath Singh(Para-6 (iii)above) and Subhankar Jha (Para-6(ii)above). He submitted that the report of the Screening Committee is only recommendatory in nature and, in terms of Section 5(3) of the Ordinance (now the Act), it was absolutely open to the State Government to reject the same or accept it, with or without modification. He submitted that in exercise of powers under Sections 8 & 9 read with Section 5(3) of the Ordinance, it was also open to the State Government to lay down the teaching subjects, the strength of students of the College and the staffing pattern for the colleges on its own, after considering the recommendations in the report of the Screening Committee, and in this regard to accept the same only to the extent it considered it fit and proper. He submitted

that this power of the State Government has been acknowledged and approved by the Division Benches in the case of Sadanand Jha (Para-6 (i)above) as well as in the case of Ram Niwas Kumar Sharma (Para-6(vi)above). Therefore, the same is not open to challenge for consideration by a learned single Judge. Relying upon a judgment of a Division Bench of this Court in the case of New Swadeshi Distillery (Proprietor-Oudh Sugar Mills Ltd.) Vs. The State of Bihar and Others, , he submitted that it was not open to this Court in exercise of powers under Article 226 of the Constitution to question the wisdom of the State Government in restructuring an educational institution, after its take-over in public interest, and substitute its own views. He fairly admitted that the juniors to the Petitioners do stand absorbed in regular service, but that was due to `default" in compliance of the orders of this Court in Raghunath Singh (Para-6(iii)above) as the same could not be successfully challenged before the higher Courts.

(vii) Other learned Counsels appearing in other writ applications adopted the arguments of Mr. Kantha advanced on behalf of the Petitioners in the first case. However, learned Counsel appearing in C.W.J.C. No. 1879 of 2004 advanced some arguments in respect of case of the two Petitioners before this Court in his case. He submitted that in response to the notice, Petitioners had filed detailed representation which was not considered and dealt with, while rejecting their cases, by the Respondents. He submitted that the Screening Committee (the 1st Committee) had proposed 296 posts of non-teaching employees in each College total of which came to 888. On the date of their take over, actual working strength of non-teaching employees taken together in all the three Colleges was 878. Thus, had the Respondents accepted the recommendations of the Screening Committee in respect of staffing pattern, all the employees actually working in the three Colleges on the date of their take over would have been recommended and absorbed in the Government service, and much before the Petitioners of Raghunath Singh and analogous cases (para-6 (iii)above) had to absorbed in "default". However, it was only because State Government, subsequent to submission of Screening Committee report, laid down the staffing pattern for the three Colleges, sanctioning lesser number of posts of non-teaching employees, the Petitioners became surplus. He submitted that the notings of the file ending with the initial of the then Chief Minister, as contained in Annexure-11 with the writ application, would show that in fact decision had already been taken to absorb the services of all the qualified employees of the Colleges. He submitted that subsequent Screening Committee constituted by the Respondents (the 4th Committee) did not submit its report with independent recommendations, as it found that no fresh materials had come before it to reconsider the decisions earlier taken in respect of employees concerned. Therefore, learned Counsel submitted that on the date of termination of services of the Petitioners, there was no other report before the Government except the report of the statutory Screening Committee (the 1st Committee), which had recommended for absorption of Petitioners. At that stage neither there was any decision in existence from before, nor any decision had been taken by the State

Government, to reduce the strength of the staff of the Colleges. Hence, he submitted that, it was not open to the State Government to take a decision subsequently, laying down a new staffing pattern for the Colleges and make it applicable on the recommendations of the statutory Screening Committee (the 1st Committee). The order passed by the learned single Judge in Raghunath Singh's case (Para-6(iii)above) was in respect of the persons who were not found fit by the statutory Screening Committee(the 1st Committee). The said judgment was applied in respect of the Petitioners of the batch of cases only. So far present Petitioners are concerned, their cases had already become final on the recommendation of the statutory Screening Committee for their absorption.

(viii) In reply to the above submissions of learned Counsel appearing for the Petitioners in C.W.J.C. No. 1879 of 2004, learned Counsel for the State drew the attention of this Court to the judgment of the Division Bench in the case of Ram Niwas Kumar Sharma and Shashi Nath Jha (Para- 6 (vi)above) and submitted that these stand of the Petitioners finally stand considered and rejected by the Division Bench and the same cannot be reopened.

(ix) After hearing learned Counsel for the parties, this Court considers it appropriate to first deal with the issues formulated by Mr. Kantha in the first case as quoted above.

(x) So far as the first issue formulated by Mr. Kantha is concerned, this Court finds it difficult to accept that the Division Bench judgment of Sadanand Jha (Para-6(i)above) stands obliterated and superseded by the Apex Court order in the case of the Petitioners (Para-6(ix)above). The order of the Apex Court in the case of the Petitioners clearly shows that learned senior counsel, who appeared for the Petitioners before the Court, made only one submission before the Court that the Petitioners would be satisfied if they are given the same treatment as given to the Petitioners of Raghunath Singh's case(Para-6(iii)above). The State counsel agreed to it, expressly pointing out that since Appellants (Petitioners) had not challenged the staffing pattern, the State Government will have no objection in adopting the same course as directed by the learned Single Judge in the said paragraph-42 of the judgment in Raghuanth Singh (Para-6(iii)above). It may be pointed out that the staffing pattern was found valid and legal by the Division Bench in Sadanand Jha's case (Para-6 (i)above). Since Petitioners' matter traveled to the Apex Court, it was open to learned senior counsel for the Petitioners to challenge the said order or raise the issue before the Apex Court with regard to correctness of the said judgment or the staffing pattern laid down by the Government, which he did not do. In the appeal of the Petitioners, Apex Court was in a position to examine whole matter and that way examine the correctness of the judgment of Sadanand Jha (Para-6(i)above), Ram Niwas Kumar Sharma and Shashi Nath Jha (Para-6(vi)above), but learned senior counsel appearing for them did not make any effort to that effect, and got the appeals disposed of only in terms of paragraph 42 of judgment of Raghunath Singh's case (Para-6 (iii)above), with agreement of learned Counsel for the State

of Bihar. Thus, it is apparent that, by the said "decree" of the Apex Court, issued under Article 142 of the Constitution, neither the Division Bench judgment in Sadanand Jha case (Para-6(i)above) stood "obliterated", nor the learned Single Judge judgment in Raghunath Singh (Para-6 (iii)above) stood "affirmed". However, so far as cause of action is concerned, there Mr. Kantha is right. The order of the Apex Court and consequential individual show cause notices to the Petitioners, their consideration by the Departmental Committee, its recommendation adverse to them and its acceptance by the Government and final orders rejecting their claim do give a new cause of action to the Petitioners which have been agitated in these writ applications.

(xi) So far as second issue raised by Mr. Kantha is concerned, this Court is unable to hold the same to any benefit of the Petitioners. Whatever be the merits of the judgment and consideration made by the learned single Judge in Raghunath Singh's case (Para-6(iii)above), it cannot now be relied upon by any Court in view of categorical findings of the Division Bench in Ram Niwas Kumar Sharma's case (Para- 6 (vi)above). The Division Bench earlier found it difficult to accept that the decision in Raghunath Singh's case (Para-6(iii)above) was "affirmed" or "approved" by the appeal Bench or by the Apex Court as the two appeals against the same before the Division Bench of this Court were dismissed only on account of delay of 691 days and 679 days in filing the appeals and the Apex Court also dismissed the appeals of the State in limine. Having held thus, the Division Bench proceeded to consider the judgment of the learned single Judge in Raghunath Singh's case (Para-6(iii)above) independently. Thereafter, taking into consideration the two judgments together, i.e. the Division Bench judgment in Sadanand Jha's case (Para-6(i)above) and the learned single Judge judgment in Raghunath Singh's case (Para-6(iii)above), the Division Bench found that the Division Bench in Sadanand Jha (Para-6(i)above) had dealt all aspects of the matter found in favour of the Petitioners by learned single Judge in Raghunath Singh's case (Para-6(iii)above) and therefore, it was not open to learned single Judge to differ from the Division Bench which was a binding precedent. The concluding part of paragraph 16 and paragraph 17 of the Division Bench judgment in Ram Niwas Kumar Sharma (Para-6(vi)above) are appropriate to be reproduced as herein below:

16 ... The learned single Judge in Raghunath Singh's case might have differed with the view but nevertheless the division bench decision constituted a binding precedent. He was obliged to follow the division bench decision in Sadanand Jha.

17. For the aforesaid reasons, we find ourselves unable to endorse the course taken in the case of Sri Raghunath Singh and we feel obliged to follow the division bench decision in Sadanand Jha.

(xii) Thus, the reliance placed by Mr. Kantha on the judgment of learned single Judge in Raghunath Singh's case (Para- 6 (iii)above) is clearly misconceived. Therefore, this Court does not find this issue also in favour of the Petitioners.

(xiii) The third issue raised by Mr. Kantha is a statement of fact and not an issue to be adjudicated by this Court. He is correct in saying that in the appeal of the Petitioners, judgment of learned single Judge in Raghunath Singh's case (Para-6(iii)above) was not under consideration (this statement contradicts the statement made in first issue that the same stands affirmed therein) and it was only the Division Bench judgment passed in the case of these Petitioners which was under challenge. However, it must be pointed out again that the Division Bench in the case of Ram Niwas Kumar Sharma (Para-6(vi)above) had found the judgment of learned single Judge in Raghunath Singh's case (Para-6(iii)above) as not correct. Learned senior counsel for the Petitioners had full liberty to question this finding of the Division Bench before the Apex Court and thus get the matter reopened to be examined by the Apex Court. However, this was not done and learned senior counsel remained satisfied by confining his prayer for a direction from the Apex Court for consideration of the cases of the Petitioners in terms of paragraph 42 of the judgment of Raghunath Singh's case (Para-6(iii)above) only.

(xiv) Issue No. 4 formulated by Mr. Kantha is also partially a statement of fact. It is true that the State Government has passed orders for absorption of some of the employees and removal of others including Petitioners on the consideration of recommendation of the Screening Committee (the 1st Committee) report. However, import of the submission that since the Screening Committee (the 1st Committee) was statutory in nature, its recommendation for creation of 296 posts in each College was binding on the State Government is not correct. By virtue of provisions of Sub-Section 2 of Section 5 (Para-7 above) of the Ordinance (now the Act), State Government had the authority to set up one or more Committees for examination of various matters mentioned in the Sub-section and to submit a report. It is true that, a committee thus set up, assumes the character of a "statutory committee". But that does not make its recommendations binding on the Government. The wordings of Sub-section (3) of Section 5, in this connection are important (Para-7 above), which clearly show that the final authority lay with the Government to take decisions in various matters, after receipt of the report. The wordings of provisions of Sub-section (2) & (3) of Section 5 have to be given their full meaning and this Court finds that the legislature, by incorporating Sub-section (3) in Section 5, and in the language it has been done, had clearly intended to give full liberty to the State Government to differ with the report of the Committee set up under Sub-Section 2, in any manner it liked and to accept the same with whatever modifications it thought proper. Besides, the power of the State Government to take independent decision under Sub-section (3) of Section 5 was considered in Sadanand Jha's case (Para-6(i)above) and the Division Bench clearly found that the exercise of power by the State Government in respect of the Colleges under Sub-section (3) of Section 5 was based on staffing pattern which was validly determined by the Government and on relevant materials and it could not be said to be arbitrary, unjust or unreasonable. This finding of the Division Bench in respect of the

powers and actions of the State Government in terms of provisions of Sub-section (3) of Section 5 is not open for consideration by this Court sitting singly in view of established judicial discipline and decorum. Therefore, this Court does not find any merit in this issue also as raised by Mr. Kantha.

(xv) Termination of the Petitioners, although having found suitable and recommended for absorption by the Screening Committee (the 1st Committee), as against unsuitable persons having been absorbed and enjoying the Government service and continuance has been questioned by Mr. Kantha as unconscionable and arbitrary in the fifth issue. The heart burning of the Petitioners is quite understandable, but technically, it is not because of the arbitrary and discriminatory treatment by the Respondents that the Petitioners have been thrown on road. The so called unsuitable persons got into service on account of a judgment and order of this Court though, the said judgment of learned single Judge was not found correct later on by a Division Bench in Ram Niwas Kumar Sharma (Para-6(vi)above) on account of being in teeth of binding precedent of Sadanand Jha (Para-6(i)above). But, since, the Respondents could not get the judgment of learned Single Judge in Raghunath Singh (Para-6(iii)above) set aside by a higher Bench/Court, may be because of their "default", the action taken by them in compliance to the same cannot be termed arbitrary. Action against particular official(s) for this "default" may lie, but this cannot create a right in the Petitioners to be absorbed in service only on that count. (xvi) The sixth issue raised by Mr. Kantha is somewhat connected with issue No. 4 where scope of power of the State Government in terms of the Ordinance (now the Act) has been questioned. In this issue, Resolution of the State Government dated 8.9.1988, contained in Memo No. 2819, has been called to be treated as only wishful thinking of the Government. This Court is unable to accept the said stand of learned senior counsel. The said Resolution (which is not annexed with any of the writ applications or the counter affidavit) has already been considered by the Division Bench in the case of Sadanand Jha (Para-6(i)above) and has been found to be valid. The contents of the said Resolution has been quoted therein and it was found that the State Government derived power in this respect for determining the disciplines of the Engineering stream to be taught in each College, and to fix the intake limit of the students in each discipline in each Session from Sections 8 and 9 of the Ordinance (now the Act). Hence in view of the findings of the Division Bench, it cannot be said that it was merely a wishful thinking and not a statutory act of the Government in terms of the law in this regard.

(xvii) The seventh issue raised by Mr. Kantha is also in respect of the said Resolution of the Government dated 8.9.1988. It is sought to be agitated that in view of the objects of the Act, the Screening Committee was bound only by statutory provisions framed by any University or the law laid down in any Ordinance or by a Government decision and that too before promulgation of the Ordinance, which was three years prior to the said Government Resolution dated 8.9.1988. Therefore, even if the Government Resolution could come to the notice

of the Screening Committee before it submitted its report, it was not obliged to refer to it. In this regard, it may be just pointed out that the State Government clearly derived powers to issue such resolution from Sections 8 & 9 of the Ordinance, and that having been done, it was obligatory for the Screening Committee (the 1st Committee) to notice and take it into account for making its recommendations, which it did. Appendix-XX is the report by which the Committee (the 1st Committee) had recommended staffing pattern taking into account the intake strength of the students laid down by the said Resolution. In Sadanand Jha's case (Para-6(i)above), also this Resolution of the Government dated 8.9.1988 has been held as a valid decision of the Government and in terms of Sections 8 and 9 of the Act.

(xviii) In the last issue formulated, Mr. Kantha has tried to raise a question that the Screening Committee report was statutory and therefore it was mandatory and, the State Government, even under the doctrine of eminent domain, has no jurisdiction to superimpose its own findings. At best, the State Government could only refer the matter back to the Screening Committee, on account of failure of which, the State Government was stopped by the principles of promissory estoppels to differ with it. While dealing with issue No. 4 framed by him, this Court has clearly pointed out that the legislature, while providing for setting up of a statutory Screening Committee in terms of Sub-section (2) of Section 5, has also empowered the State Government, with full liberty, to accept full or in part or with modifications, as it may consider appropriate, the said report of the Screening Committee in exercise of its powers in terms of Sub-section (3) of Section 5. Therefore, it is not the question of "eminent domain", but statutory powers of the State Government flowing from Sub-section (3) of Section 5, which gave authority to the State Government to accept the recommendations of the statutory Screening Committee in full or in part and with modifications as it may consider appropriate. The wordings of Sub-section (3) of Section 5, as extracted above, makes it clear that on receipt of the report of the statutory Screening Committee (the 1st Committee), the State Government had full liberty to "determine the strength of the teachers and other category of employees and the staffing pattern" and "decide in respect of each member of the teaching and other categories of employees on merit of the each case whether to absorb him in Government service or to terminate his service or to allow him to continue on ad hoc basis for a fixed term or on contract" and "where necessary re-determine the rank, pay, allowances and other conditions of service". This wording of Sub-section (3) of Section 5 clearly provides full liberty to the State Government to take an independent decision upon receipt of the report of the Screening Committee and clearly negatives the submissions of Mr. Kantha that it was mandatory on the part of the State Government to accept the recommendations of the Committee.

(xix) So far as submissions of learned Counsel appearing in C.W.J.C. No. 1879 of 2004 are concerned, his challenge is also mainly to the laying down of staffing pattern by the Government after submission of report by the statutory Screening

Committee (the 1st Committee). He has rightly submitted that since subsequent Screening Committee found itself a smaller Committee and it did not find any material to differ from the decisions taken earlier, there remained only one report of the Committee i.e. by the Statutory Screening Committee (the 1st Committee) which had considered the cases of the Petitioners and had submitted its recommendations in their favour. But the fact remains that, as discussed above, the State Government had the power under Sub-section (3) of Section 5 to restructure the College, prescribe disciplines, intake strength of students, staffing pattern etc. Therefore, as held earlier, the decision of the State Government to prescribe staffing pattern as per the norms of the Board of All India Council of Technical Education (AICTE), even taken subsequently, cannot be questioned. As rightly submitted by learned Counsel for the State, this issue has been decided by the Division Bench in Sadanand Jha's case (Para-6(i)above), Ram Niwas Kumar Sharma's case (Para-6(vi)above) and Shashi Nath Jha's case (Para-6(vi)above) and the same cannot now be reopened and questioned by this Court sitting singly. This Court has perused the photocopy of note-sheet (Para-5 (xiii)above), annexed as Annexure - 11 with CWJC No. 1879 of 2004, as relied upon by the learned Counsel. The notings in the said note-sheet are clearly related to the Petitioners covered by Raghunath Singh case (Para-6 (iii)above) and have nothing to do with the employees who were found fit but surplus and were terminated on that count alone.

(xx) Thus, this Court finds that submissions of learned Counsels for the Petitioners and the issues raised by them, as considered above, are of no help to the Petitioners and do not make out a case for grant of reliefs to the Petitioners as prayed by them in their respective writ applications.

(xxi) However, although this Court has not found any force in the arguments of learned Counsels for the Petitioners in support of their claim, but, after going through the records and examining the documents available with different writ applications, this Court finds that the cases of the Petitioners still require consideration and examination from a different perspective. It is not the question of powers of the State Government to restructure the Colleges by providing for new disciplines to be taught in the Colleges and the intake strength of the students in each discipline per year, which power the State Government clearly derives from Sections 8 and 9 of the Ordinance (now the Act). It is also not the question of determining the strength of the teaching and non-teaching staff and laying down of staffing pattern in these Colleges, which power also the State Government clearly derives in terms of Sub-section (3) of Section 5. It is also not the question of superimposing its own decision on the recommendation of the statutory Screening Committee and taking a decision contrary to or in modification of said recommendations, which power also the State Government clearly derive from same Sub-section (3) of Section 5. Question is of policy decision of the Government resulting into promulgation of Ordinance and policy decisions in respect of consequences of the same and actions to be taken as a consequence of take over of the Colleges in terms of the said Ordinance. It is

true that the State Government, on take over of the Colleges, had full liberty in terms of the Ordinance to re- determine the teaching as well as administrative structure of the three Colleges. The preamble of the Ordinance shows that the policy decision to take over the three Colleges was taken by the Government with a view to start courses of study of new subjects of Engineering which no Institution at the relevant point of time was providing in the State, and therefore, the Governor of Bihar was satisfied that the three Colleges should be taken over to introduce and encourage courses of study of new subjects with a view to develop engineering education in the State of Bihar. But this has to be examined as to whether, after taking the policy decision to take over three Colleges in public interest and providing for it, by promulgating the Ordinance, absolute discretion was given to the functionaries of the State Government to take follow up steps and take consequential decisions in terms of the provisions of the Ordinance, or, on the other hand, the State Government took further policy decisions in respect of different matters for implementation of provisions of the Ordinance with clear guidelines for the functionaries of the Government, responsible for taking executive decisions and issuing executive orders in the matter. Clearly, the decision prescribing disciplines to be taught in each of the Colleges and the intake strength of the students was another policy decision taken by the Government for guidelines to the executive functionaries for taking executive decisions. Adoption of norms of the of AICTE and laying down staffing pattern to be introduced in the three Colleges was another policy decision, which was taken by the Cabinet of Ministers, the highest policy making body of the State. These decisions were taken by virtue of the powers vested in the State Government under the provisions of the Ordinance.

(xxii) Although, no learned Counsel drew the attention of this Court to a document of vital importance for consideration of the cases of the Petitioners, this Court, while examining the records and scrutinizing the documents annexed with the various writ applications, stumbled upon such a document which is annexed as Annexure-8 with C.W.J.C. No. 8843 of 1996, Annexure-10 with C.W.J.C. No. 8844 of 1996, Annexure-7 with C.W.J.C. No. 8847 of 1997 and Annexure-8 with C.W.J.C. No. 11161 of 1996 (Para-4 (ii)above). This is a Resolution of the State Government contained in Memo No. 96 dated 15.1.1990. This Resolution assumes importance from the fact that this was issued on the same day and it immediately preceded the said Resolution contained in Memo No. 97 (Para-4(iii)above) by which, the Cabinet decision dated 27.12.1989, adopting staffing pattern prescribed by the AICTE for the three Colleges was notified. In view of importance of this Resolution No. 96 dated 15.1.1990, which may turn the table in favour of the Petitioners, it is appropriate to reproduce the same here in this judgment itself in extenso:

Govt. of Bihar Deptt. Of Science & Technology

Patna, dated Jan.15, '90.

Resolution

The Screening Committee constituted by the Departmental Resolution No. 1063 dated 24.4.87 has submitted its report. After taking that into account, the State Govt. has decided that the rescreening should be made of those teachers and non-teaching staffs who were found unfit by the committee and those teachers and non-teaching staffs who were found fit but surplus due to unavailability of the posts.

The members of the Screening Committee will be as follows:

1. Joint Secretary/Addl. Secretary, Deptt. Of Sc. & Technology ...President
2. The concerned District Magistrate or a Senior Addl. Collector nominated by him where the institute is situated ... Member
3. Representative of Deptt. of Personnel who will be in the rank of Deputy Secretary ... Member
- 4(a) Director, B.I.T., Sindri ... Member
- (b) Principal, B.C.E., Bhagalpur ... Member
- (c) Principal, M.I.T., Muzaffarpur ... Member
5. One Expert ... for the Screening of Teachers ... Member
6. Joint Director Administration ... Member Secretary.

In the light of the decisions taken by the Cabinet, it is necessary to add the following points by the Committee:

(A) The services of those teachers and nonteaching staffs must be regularized if they possess the requisite qualification.

(B) The services rendered by them before taking over of the Institution must be considered sympathetically.

3. The Screening Committee must submit its report to the Govt. within 30 days.

Order: It is ordered that a copy of the resolution should be sent to Bihar Gazette for publication and its copy should be sent to all the members of the Committee.

By the order of the Governor of Bihar Sd/- Illegible (K.K. Saha) Secretary to the Govt. Deptt. of Sc. & Technology. Memo No. 96/SC. & Technology, Patna, dated 15 Jan. 1990.

(Emphasis supplied)

(xxiii) Now, after going through this Resolution, as extracted above, it is apparent that, after receipt of the report of the earlier Screening Committee (the 1st Committee), set up by Resolution No. 1063 dated 24.4.1987 (not available on the record, but was Appendix-XXI with the report), and after considering the same, the State Government had decided that re-screening should be done of those teachers and non-teaching staff, who were found unfit by the Committee

and also those teaches and non-teaching staff, who were fit but surplus due to unavailability of the posts. Hence, a Six Member Committee was constituted for the purpose, obviously in exercise of powers u/s 5 (2) of the Ordinance. The significant part of the Resolution is that after mentioning details of the members of the Committee, it is mentioned that two points be added to the earlier fixed points, in the light of the decision taken by the Cabinet. The first point was in respect of regularization of teachers and non-teaching staff and it was mentioned that the services of those teaches and non-teaching staff must be regularized "if they possess requisite qualifications". The second point was that the services rendered by them in the Institute must be considered sympathetically. It is not in dispute that this Screening Committee, constituted by this Resolution, never submitted its report. Nonetheless, it is clear that the decision notified by this Resolution was taken by the Cabinet itself, while taking decision to follow the norms of the AICTE for laying down staffing pattern for the three Colleges. Apparently, both the decisions were simultaneous and taken by the Cabinet on the very same day. Therefore, it can be assumed, with certainty, that by laying down staffing pattern for the three Colleges, on the basis of norms of AICTE, Cabinet was conscious of the fact that many teaching and non-teaching employees, though qualified, may be thrown out of service under the Sun, which clearly, the Cabinet found inequitable and causing hardship to the employees, for no fault of theirs. Therefore, while prescribing staffing pattern as a policy, it also took another policy decision, simultaneously, to regularize all teaching and non-teaching staff who had requisite qualifications. The wordings of this Resolution No. 96 shows that this policy decision of the Cabinet, which was admittedly highest policy making body of the State, was not qualified with the words "in the College" and "available vacancy". The decision to regularize such employees of the Colleges, who were qualified, and who passed the three tests, as laid down in the Resolution No. 1063 dated 24.4.1987 (by which the 1st Committee was set up), was absolute and unconditional. This was a clear decision by the Cabinet and use of the word "must" was clear indication that the functionaries of the Government in the Department had no option than to follow the same. Unfortunately, the Committee constituted by this Resolution either did not start its work or never completed the same and submitted its report. Therefore, this policy decision of the State Government at Cabinet level remained overlooked by the functionaries of the Government in the Department and they kept on acting in teeth of it and contrary to it by issuing notifications terminating services of such employees also, who were found fit for absorption by the Screening Committee (the 1st Committee), on the ground that, as per staffing pattern laid down by Resolution No. 97, they were surplus. The decision of the Cabinet as reflected from Resolution No. 96 clearly shows that the consideration of the employees had not to be confined only to the extent of vacancies available in the Colleges as per staffing pattern, being laid down by Resolution No. 97. As stated earlier, decision of the Cabinet was absolute and unconditional and therefore, in the event of vacancy not being available, the functionaries of the Government at the Department level had no option than to regularize such employees, who were

qualified, and passed the three tests, as laid down in Resolution No. 1063 dated 24.4.1987, against any available vacancy under the Department as per the rank and qualification of the incumbents. This has not been done by the Respondents. There is no reason why, if the decision of the Government prescribing disciplines, intake strength of the students and Cabinet decision laying down staffing pattern as per the norms laid down by AICTE are given effect to in full, the simultaneous decision taken by the Government at Cabinet level for regularization of all qualified teaching and non-teaching employees should not be implemented in absolute terms. The use of word "must" in this decision of the Cabinet, as reflected from the above quoted Resolution, makes it clear that the Cabinet had not left any discretion to the functionaries of the Government to act in any other manner in the matter. Only the qualification of the employee had to be checked for the purpose of absorption for which a Committee was also constituted, but unfortunately, the same never functioned nor submitted its report. This is complete failure on the part of the Respondents to implement policy decision of the Government taken at Cabinet level which was definitely passed in public interest and on equitable considerations.

It may be pointed out that this Court has not been able find that that this Resolution No. 96 dated 15.1.1990 was ever placed before any Court in any case at any stage earlier, and said two decisions (points) of the Cabinet, mentioned in the said Resolution were ever considered in any case, although the effect and import of Resolution No. 97 of the same date, laying down staffing pattern, was a subject matter of serious dispute repeatedly. It may also be pointed out that there is no pleading by the Respondents on the records of any of the matters under consideration that the resolution No. 96 was later on withdrawn, recalled or rescinded at any point of time. It may also be pointed out that, though, after the order of the Apex Court, the cases of the Petitioners were rejected again by the office order dated 14.8.2003 (Para-4(xiv)above), Annexure 13 (Para-5(ii)above), the photocopy of note-sheets of a file, (which is not challenged by the Respondents in their counter affidavit) shows that proposal for absorption of the employees (who were found surplus and terminated on that ground) in new engineering colleges was under active consideration at different level in 2007-08 also.

9. CONCLUSION

(i) Thus, having considered the entire facts and circumstances, this Court is of the opinion that the Petitioners and others, who were found fit for absorption by the Statutory Screening Committee (the 1st Committee) but were terminated only on the ground of having been found surplus, have a right to be considered and absorbed in the service of the State Government under the Department on any available sanctioned vacant post, even though the posts in the College stand filled up due to admitted latches on the part of the Respondents themselves. They get this right not because the Statutory Screening Committee (the 1st Committee) had recommended for their absorption; not because their juniors

and persons found unfit stand absorbed; not because staffing pattern was laid down by the Respondents subsequent to submission of report by the Committee; not because the recommendations of the Committee in their favour ought to have been considered only in the light of staffing pattern recommended by it; not because the Respondents could not superimpose their decision in their respect over the recommendations of the Committee; not because the findings and recommendations of the Committee ought to have been treated as mandatory and binding on the Government; not because any of the judgments of this Court or the Apex Court helps them expressly or impliedly; etc. They get the right to be considered and absorbed because the highest decision making body of the State, the Cabinet of Ministers in the Government, had taken a policy decision that all qualified must be regularized; because the word "must" used by the Cabinet as appearing in the Resolution No. 96 dated 15.1.1990 did not leave any scope for their termination on the ground of being surplus; because this decision of the Cabinet was clearly based on principles of equity, reasonableness and fair play in action; because they had already withstood the test of screening held by the 1st Screening Committee as per the guidelines laid for it in Resolution No. 1063 dated 24.4.1997; because they were and are citizens of a welfare State; because the Government should act as a model employer and should act in furtherance of object to provide and/or safeguard their right to work and earn their livelihood as enshrined in Article 41 of the Constitution of India; because had the College not been taken over, they would have continued in service with security of tenure and livelihood till their superannuation and would have got admissible old age benefits; because it is extremely unconscionable and arbitrary to throw them out of service under the Sun, for no fault of theirs, only because the State Government had decided to takeover the College and other undeserving have come to occupy the posts due to default on the part of the Respondent themselves; because principles governing law of "retrenchment" and "lay off" cannot be applied in the present case as they primarily operate in the field of private employment where utility, productivity, profit and loss are of paramount consideration; and lastly because right to livelihood has come to become an integral part of right to life guaranteed under Article 21 of the Constitution of India which a citizen cannot be deprived of on account of whim and caprice of executive functionaries of the State acting contrary to public policy and resolution of the highest decision making body of the State. They do deserve consideration and absorption in Government service.

10. OPERATIVE ORDER

(i) In the result all the writ applications, except CWJC No. 8843 of 1996 and CWJC No. 12606 of 1996, are allowed. The impugned orders of remaining eight writ applications, terminating the services of the concerned Petitioners and/or rejecting their representations/ claims, are quashed and the said writ applications are allowed. The Respondents are directed to take up the screening of those Petitioners and others who were found eligible by the 1st Screening Committee but terminated only the ground of being found surplus, for the

purposes of their reinstatement and absorption in Government service under the Department on any suitable vacant sanctioned post, strictly in terms of the decision of the Cabinet reflected in the Resolution contained in memo No. 96 dated 15.1.1990 of the Department of Science and Technology, and pass orders of their reinstatement and absorption in regular Government service positively within four months from the date of receipt/production of a copy this order.

(ii) Normally, the Petitioners could raise a legitimate claim for their reinstatement with all consequential monetary benefits with effect from 31.1.1991, the date of the first order of their termination on the ground of having been found surplus, which stands quashed in their respect. But Mr. Kantha, supported by other learned Counsels appearing in other analogous writ applications, had taken a stand, while concluding his arguments, that, if the Petitioners are reinstated and absorbed in regular service, counting their services from 31.1.1991 for the purposes of seniority, pay-scale, increments, pay revisions etc., they will not stake any claim for arrears of salary also. His stand is quite reasonable and fair. Hence, this Court directs the Respondents that such Petitioners and others, whose services were dispensed with only due to being found surplus, shall be absorbed, strictly in terms of said Resolution No. 96 dated 15.1.1990, in regular Government service with effect from 31.1.1991, with all consequential benefits flowing to them by treating them in continuous service, except payment of arrears of salary.

(iii) However, in case the Respondents fail to take a final decision in the matter of Petitioners strictly in terms of the order of this Court as above within the time fixed, the recommendations of the Statutory Screening Committee(the 1st Committee) in its report dated 11.10.1988 shall be treated as final in their respect and they shall be treated to have been reinstated and absorbed in service of the State Government with effect from 31.1.1991 itself with all consequential monetary benefits, which shall be calculated and paid to each of them within three month thereafter.

(iv) So far as sole Petitioners of CWJC No. 8843 of 1996 and CWJC No. 12606 of 1996 are concerned, their names find place in Appendix VII of the report of the 1st Screening Committee which contains the names of such employees who were not found fit for absorption on account of overage. Such employees were terminated by Notification No. 323 dated 3.7.1991, which Notification has been challenged by the Petitioners in these writ applications. By this Notification, on the basis of eligibility and conditions laid down by the AICTE and in the light of the eligibility and conditions prescribed by the State Government, and upon examining each case on its own merits, the services of the petitioners and others, named in the notification, were terminated. This notification was under challenge in Shubhankar Jha case (Para-6 (ii)above) and was set aside. This could help the Petitioners of these two cases but, unfortunately, the judgment of Shubhankar Jha was brought to the notice of Division Bench in Ram Niwas Kumar Sharma (Para-6 (vi)above) and the Division Bench has found the same as unacceptable

as precedent to be followed. Learned Counsel appearing for the Petitioners in these two matters did not advance any independent argument challenging the impugned Notification No. 323 dated 3.7.1991 and/or did not take a stand that the observations of the Division Bench in Ram Niwas Kumar Sharma in respect to Shubhankar Jha will not be binding to this Court even sitting singly and irrespective of such observations, the judgment of Shubhankar Jha shall squarely apply in the cases of these Petitioners.

(v) In the circumstances, so far as CWJC No. 8843 of 1996 and CWJC No. 12606 of 1996 are concerned, this Court does not find any merit in the writ applications and the same are dismissed.