
(2022) 04 JH CK 0005

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1194 Of 2009

Yadunandan Singh And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 05-04-2022

Acts Referred:

Citation : (2022) 04 JH CK 0005

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Amit Kumar Das, A. K. Yadav, Prince Kumar, Binit Chandra

Final Decision : Disposed Of

Judgement

Anubha Rawat Choudhary, J

1. Heard Mr. Amit Kumar Das, learned counsel appearing on behalf of the petitioners.
2. Heard Mr. A. K. Yadav, learned counsel appearing on behalf of State of Jharkhand.
3. Heard Mr. Binit Chandra, learned counsel appearing on behalf of respondent Nos. 8 and 9.
4. Heard Mr. Prince Kumar, learned counsel appearing on behalf of respondent Nos. 6 and 7.
5. Nobody appears on behalf of respondent Nos. 10 and 11.
6. This writ petition has been filed for quashing the order dated 25.9.2008 (Annexure-27), whereby the Respondent no.- 9 has rejected the representation filed by the petitioners pursuant to order dated 01.02.2008 (Annexure-24) passed by this Hon'ble Court in W.P. (S) No. 5440 of 2002;

A prayer seeking a direction upon the concerned respondents to show cause as

to why and under what authority they have not regularized the services of the petitioners with effect from the date of their initial appointments, particularly in the light of the observation made by the Hon'ble High Court of Judicature at Patna in the case of the petitioners being CWJC No. 1073 of 1997 contained in Annexure-17 to this writ application.

A mandamus has been prayed for upon the concerned respondents to regularize the services of the petitioners with effect from their initial appointments i.e. March, 1979 and to give them all consequential benefits.

Arguments of the petitioners

7. Learned counsel for the petitioners submits that on 03.03.1978 Under Secretary, Government of Bihar informed the Principals of all Government Polytechnics and Mining Institutions in the State regarding procedure for appointment of 'Teacher fellows' against vacant posts of assistant professors and minimum qualification was also prescribed. Pursuant thereto, advertisement dated 15.05.1978 was issued. The petitioners were duly interviewed by the Selection Committee and they were appointed as 'Teacher fellows' at Government Polytechnic for fixed salary of Rs. 500/- per month.

8. Thereafter advertisement was issued in the month of February, 1982 for filling the posts of Lecturers/Assistant Professors on ad-hoc basis and the name of the petitioners were included amongst the selected candidates in the list prepared after interview and the name of the selected candidates was published on 26.06.1982. It is submitted that a statement to that effect has been made in paragraph-13 of the writ petition which has not been denied by the respondents.

9. The learned counsel further submits that no separate appointment letter was issued to the petitioners, although the petitioners were selected after interview and the petitioners were allowed to continue on temporary basis @ Rs. 500/- per month and all fresh applicants were appointed on ad hoc basis.

10. In the year 1986, the State of Bihar published Bihar Gazetted Officers' Ad-hoc Appointments Regularisation Ordinance, 1986, whereby the services of all gazetted officers appointed on Ad hoc/temporary basis up to June 30, 1986 who were continuing in service were regularized and their appointments were declared as deemed to be made on regular basis with effect from the date of appointment. On 24.07.1987 appointment of all the Ad hoc employees were regularized, but the petitioners who were working on temporary basis against the post of assistant professors/lecturers, which is a gazetted post, though appointed as 'Teacher fellows' were not regularized. Consequently, the petitioners represented and appropriate note sheets were also prepared in the files of the respondents indicating that the petitioners should have been regularized, but they have been left out only as a matter of chance.

11. It is the further case of the petitioners that on 03.03.1988, the Additional Secretary, Science and Technology had requested the Commission to postpone

the selection of candidates against the post reserved for backward category and economically backward category so that the petitioners, who belong to the reserved category could be regularized against those posts, but the said request was rejected by B.P.S.C. vide letter dated 31.08.1988. During the course of arguments, it is made clear by the learned counsel for the parties that the order dated 31.08.1988 was never challenged by the petitioners.

12. The petitioners had made a request for regularization of their services and ultimately getting no relief, the petitioners approached this Court in writ petition being C.W.J.C. No. 1073/1997. The said writ petition was disposed of vide order dated 09.10.1998 (Annexure-17).

13. The learned counsel has placed the aforesaid order passed in C.W.J.C. No. 1073 of 1997 and submitted that there was a clear finding by this Court that the petitioners have been appointed through advertisement and after proper selection, they had continued in service almost 20 years and therefore it would not be proper to deny the regularization of their appointments on regular scale of pay and after recording this finding, the matter was remitted to the State Government for sending a proposal to the Commission who was directed to consider the same under proper prospective and in the light of observations made in the order and pass an order regarding grant of concurrence to the services of the petitioners within a period of three months from the date of receipt of such requests.

14. The learned counsel further submits that the Committee of B.P.S.C. (Bihar Public Service Commission) interviewed the petitioners on 20.02.1999 pursuant to the order passed by this Court in C.W.J.C. No. 1073/1997 dated 09.10.1998 and vide letter dated 24.02.1999 recommended the case of the petitioners for their fresh appointment from the date of interview for the post of lecturer instead of passing order of regularization in spite of 20 years of teaching experience and consequently, the petitioners were appointment against vacant post vide order dated 16.03.2000 as lecturer in the pay-scale of 2200- 4000 temporarily.

15. Thereafter, the petitioners again made representation raising their grievance and the Secretary, Department of Science and Technology and Information Technology rejected the representation of the petitioners vide order dated 20.05.2002 by recording that the post of 'Teacher fellows' was not a regular post and also ignored the fact that vide letter dated 03.03.1988, the State Government had already taken a decision to absorb the services of the petitioners against two vacant posts.

16. Consequently, the petitioners filed another writ petition being W.P. (S) No. 5440/2002, wherein the order dated 20.05.2002 was set-aside by this Court vide order dated 01.02.2008 and the matter was remanded back to the Secretary, Department of Science and Technology, Government of Jharkhand, Ranchi to consider the representation of the petitioners afresh. The petitioners filed representation on 06.03.2008 and thereafter, ultimately the representation of the

petitioners was rejected vide order dated 25.09.2008, which is the order impugned in the present case.

17. The learned counsel has placed the recommendation of B.P.S.C. which is at page 105 of the present writ petition and is a part of Annexure-18 which indicates that the Commission was not in favour of giving appointment to the petitioners right from the date of their appointments as 'Teacher fellows' on permanent basis, but considering 20 years of experience of the petitioners, recommended that the petitioners be appointed against the post of lecturer. Consequently, order as contained in Annexure-19 was issued and the petitioners were granted fresh appointment.

18. The learned counsel while assailing the impugned order has submitted that there was enough indication in the earlier order passed by this Court in the year 1998 that the petitioners were entitled for regularization, but ultimately the petitioners were given appointment vide notification dated 16.03.2000 and the entire past services of the petitioners were only considered for the purposes of appointment and no benefit for the past services has been given to the petitioners.

19. The learned counsel submits that although the specific case of the petitioners is that the benefit of entire past services with consequential relief should be given to the petitioners, but in the alternative and without prejudice to the said submission, learned counsel has submitted that at least the past services ought to have been considered for the purposes of computation of retirement benefit of the petitioners, as the petitioners have spent their whole life serving the institution and their appointments were made after following the due procedure of law against vacant post of Assistant professors though termed as 'Teacher fellows'. The learned counsel submits that while passing the impugned order the Principal Secretary, Department of Science and Technology, Government of Jharkhand has held that the petitioners were appointed as 'Teacher fellows' and not Ad hoc teachers and distinguished the case of the petitioners from Ad hoc teachers without considering the fact that the petitioners were appointed as teacher fellow against vacant post of Assistant Professor. The learned counsel submits that the designations of Assistant Professor and lecturer are the same. While assailing the impugned order the learned counsel for the petitioners has submitted that the State Government has mechanically acted by stating that the case was already refused by B.P.S.C. for regularizing the petitioners with retrospective effect and therefore, no useful purpose would be served by sending the case of the petitioners again to the B.P.S.C.

20. The learned counsel for the petitioners submits that in view of the judgments passed by the Hon'ble Supreme Court reported in (2019) 10 SCC 516 (Prem Singh vs. State of Uttar Pradesh) para-36; (2015) 11 SCC 80 (Secretary, Minor Irrigation Department & Others vs. Narendra Kumar Tripathi) para 13.1, 13.2, 13.3, 15 and 17 and also the judgment reported in (1996) 7 SCC 113 (Yashwant Hari Katakhar vs. Union of India & Others) para-3, the petitioners cannot be

denied the benefit of past services. He submits that the petitioners have attained the age of superannuation during the pendency of the writ petition and the post retirement benefit have been given to the petitioners only by taking the date of appointment as per the impugned order and the benefit of the past services has been totally denied.

Arguments on behalf of the respondents

21. The learned counsel appearing on behalf of the State of Bihar while opposing the prayer, has referred the advertisement, by which the petitioners were appointed i.e., Annexure-1 and submitted that Annexure-1 clearly indicates that the appointment of the petitioners as 'Teacher fellows' would be non-gazetted. He has also submitted that it was clearly mentioned in the advertisement itself that once the regular appointment is made, then the services of the petitioners will get automatically terminated, but during the course of argument, it is not in dispute that as per the records of this case, no regular appointment was made and the petitioners continued to work by virtue of Annexure-2 as 'Teacher fellows' even after 1982 when Ad hoc appointments were made. The learned counsel submits that the petitioners are not entitled for regularization with retrospective date.

22. Further, during the course of argument, it is not in dispute that the appointment of the petitioners was made vide Annexure-19 pursuant to the order passed by this Court in the case of the petitioners being C.W.J.C. No. 1073/1997 dated 09.10.1998 and also by virtue of the recommendation of B.P.S.C. dated 20.02.1999 as contained in Annexure-18, wherein considering the past 20 years' service, the petitioners have been recommended for appointment on the post of lecturer although the Commission refused to appoint the petitioners with retrospective date.

23. Learned counsel appearing on behalf of the State of Jharkhand, on the other hand, has opposed the prayer of the petitioners and submitted that the impugned order as contained in Annexure-27 is a well-reasoned order. As B.P.S.C. had refused to grant retrospective effect to the appointment of the petitioners earlier, therefore, no relief could be grant by the respondent while passing the impugned order. The learned counsel submits that as B.P.S.C. has already refused to grant retrospective effect to the appointment of the petitioners, therefore the writ petition is devoid of any merit and is fit to be dismissed.

Findings of this Court

24. After hearing the learned counsel for the parties, this Court finds that the petitioners are primarily aggrieved by the order dated 25.09.2008 (Annexure-27) whereby the representation filed by the petitioners has been rejected by the respondent no.3. The grievance of the petitioners is that the impugned order does not comply the order dated 01.02.2008 (Annexure- 24) passed by this Court in W.P.(S) No. 5440 of 2002 read with order dated 09.10.1998

(Annexure-17) passed in C.W.J.C. No. 1073 of 1997 in letter and spirit. The petitioners are also seeking mandamus for regularizing the services of the petitioners with effect from the initial date of appointment i.e. March, 1979 with all consequential benefits.

25. It is not in dispute that the petitioners have been given fresh appointment against vacant sanctioned post of lecturer vide order dated 16.03.2000 in the pay-scale of 2200 – 4000 considering the past 20 years' experience as they have been admittedly teaching since 1979 as 'Teacher fellows'.

Background of the appointment of the Petitioners

26. It is not in dispute that on 03.03.1978 (Annexure-1), the Government of Bihar informed the principals of all government polytechnics and mining institutions regarding procedure for appointment of 'Teacher fellows' against vacant post of Assistant Professors and the minimum qualification was also prescribed.

27. Pursuant to such decision, advertisement dated 15.05.1978 was issued; the petitioners were duly interviewed by the selection committee and they were appointed as 'Teacher fellows' in government polytechnic for fixed salary of Rs. 500/- per month. The aforesaid letter dated 03.03.1978 (Annexure- 1) clearly supports the fact that the 'Teacher fellows' were to be appointed against vacant post of Assistant Teachers (Engineer). It further appears from the said letter that the post was clearly mentioned to be non-gazetted. It was also clearly mentioned in the aforesaid letter that such appointment of persons as 'Teacher fellows' will be automatically terminated upon regular appointment in the concerned vacant post.

28. It is further not in dispute that no steps were taken for filling up the vacant post on regular basis and the petitioners continued to work as 'Teacher fellows' against vacant sanctioned posts of Assistant Professors.

29. However, in the meantime, advertisement was issued in the month of February, 1982 for filling the post of Lecturer/Assistant Professors by appointment on ad-hoc basis and the specific case of the petitioners is that they had also participated in the said selection process, faced the interview and the name of the candidates so selected was published on 26.06.1982 which included the name of the petitioners and for this, a specific statement has been made in para 13 of the writ petition which has not been denied in the counter-affidavit. In support of this statement certain file notings of the respondents as contained in Annexure-7 have also been brought on record.

30. Further, it is not in dispute that certain persons were issued appointment letters pursuant to advertisement of the year 1982 appointing them on ad-hoc basis, but no such appointment letter was issued to the petitioners, but they continued to work as 'Teacher fellows' on temporary basis at fixed salary of Rs.500/- per month against the vacant sanctioned post of Lecturers/Assistant

Professors. Thereafter, the State of Bihar published Bihar Gazetted Officers' Ad-hoc Appointments Regularisation Ordinance, 1986 (Annexure-4) whereby the services of all gazetted officers appointed on Ad-hoc /temporary basis upto June 30, 1986 who were continuing in service were regularized and their appointment was deemed to be made on regular basis with effect from the date of their appointments. Consequently, on 24.07.1987 appointment of all the ad-hoc Lecturers/Assistant Professors who were gazetted officers were regularized vide Annexure- 5, but the petitioners who were working on vacant sanctioned post of Assistant professor/lecturers as 'Teacher fellows' were not regularized as they were termed as 'Teacher fellows', declared to be non gazetted, upon fixed payment of Rs.500/-per month.

31. However, it is not in dispute that the petitioners were appointed after following the due procedure of advertisement, interview etc. and were duly qualified for the post of Lecturer/Assistant Professor. It is also not in dispute that the petitioners though appointed and termed as 'Teacher fellows', have been performing teaching work.

32. It is important to note that even after the ad-hoc employees working on the post of Lecturer/Assistant Professors were regularized in 1987, the petitioners continued to work as 'Teacher fellows' against vacant sanctioned post of Lecturers/Assistant Professors upon fixed payment of Rs.500/-. It is further not in dispute that the petitioners as well as the persons who were ad-hoc appointees both were working against the post of Assistant Professors/Lecturers and they were appointed after following the due process i.e. advertisement, interview, etc. The only distinction which remained between the petitioners and the ad-hoc appointees was that the petitioners were non-gazetted officers and termed as 'Teacher fellows' teaching on fixed payment of Rs.500/- per month, but the ad-hoc appointees were gazetted officers appointed in regular pay scale. On account of such distinction, the petitioners were not covered by the provisions of Bihar Gazetted Officers' Ad-hoc Appointments Regularisation Ordinance, 1986.

33. As per the scheme of regularization, the services of all gazetted officers appointed on ad-hoc, temporary basis upto 30.06.1986 and continuing in the services were to be regularized and their appointments deemed to have been made on regular basis with effect from the dates of their appointment.

34. It is not in dispute that the post of Assistant Professors, against which the petitioners were working as 'Teacher fellows' was gazette post, though as per Annexure- 1 and at the time of appointment, it was made clear that the persons appointed as 'Teacher fellows' would be treated as non- gazetted.

35. At no point of time, the petitioners were discontinued on the ground that ad-hoc teachers have already been appointed or regularized and the petitioners continued to work as 'Teacher fellows' discharging the duties of Assistant Professors against sanctioned vacant post, but designated differently and treated as non-gazetted officers.

Filing of writ petition being C.W.J.C. No. 1073 of 1997 and W.P.(S) No. 5440 of 2002 and the orders passed by the High Court.

36. In the aforesaid factual background, the petitioners had been representing before the authorities for regularization of their services against vacant sanctioned post of Lecturers/Assistant Professors, but no relief was granted.

37. Consequently, the petitioners filed a writ petition before Hon'ble Patna High Court being C.W.J.C. No. 1073 of 1997 which was disposed of vide order dated 09.10.1998 (Annexure- 17).

In the writ proceedings, a counter-affidavit was filed by the State wherein it was stated that the petitioners have been doing teaching work since 1979; at the time of their appointment their qualifications were more than what has been prescribed by All India Council for Technical Education; petitioners are members of Backward Community and Economically Backward Class and the State Government twice sent the requisition to B.P.S.C. for absorption of the services of the petitioners. In the counter-affidavit filed by B.P.S.C., it was stated that no proposal was pending before the commission for their concurrence for absorption/ regularization of the services of the petitioners. In such circumstances, the court, vide order dated 02.09.1998 directed the State to take further instructions and file supplementary counter-affidavit. Pursuant thereto, the State had filed a counter-affidavit taking the same stand as the previous counter-affidavit.

38. Thus, it is not in dispute that the State Government twice sent the requisition to B.P.S.C. for absorption of the services of the petitioners.

39. This Court recorded a specific finding in order dated 09.10.1998 passed in C.W.J.C. No. 1073 of 1997 as follows:

"It has not been disputed before me by the counsel for the State and the counsel for the commission that the petitioners have been continuing in the said posts of teacher fellow since 1979 after their selection. This is, of course, stated that they are continuing their services on temporary basis on a fixed salary. This Court finds that when the petitioners have been appointed through advertisement and after proper selection and they have been continuing in service almost 20 years, it will not be proper to deny regularization of their appointment on a regular scale of pay."

After recording the aforesaid finding, the following direction was issued by the writ Court:

"Considering the entire facts and circumstances of the case, and also taking into account the observation made by the Supreme Court in para -30 of the judgement in the case of Dr. Meera Massy & Ors. vs. S.R. Mehrotra & Ors. reported in 1998 SCC (3) 88 this Court directs the State Govt. to send a fresh request to the Commission for considering the case of the petitioners for grant of concurrence. Such request be made by the State Govt. within a period of two

months from the date of service of a copy of this order upon respondent no. 3. After such request is made by the State Govt., the commission will consider the same under proper perspective and in the light of the observation made in this order and pass an order regarding grant of concurrent in the services of the petitioners within a period of three months from the date of receipt of such request by the State Government.

With this observation/direction this writ petition is disposed of.”

40. This Court finds that by virtue of the order dated 09.10.1998 passed by this Court, there was a clear finding as quoted above holding that it will not be proper to deny regularization of the appointment of the petitioners on regular pay-scale, it was for the State Government and the commission to grant concurrence to the services of the petitioners in the light of the aforesaid observation made by this Court in C.W.J.C. No. 1073 of 1997. It is also important to note that such direction was issued irrespective of the aforesaid ordinance namely Bihar Gazetted Officers’ Ad-hoc Appointments Regularisation Ordinance, 1986.

41. Thereafter, the B.P.S.C. interviewed the petitioners on 20.02.1999 and observed that the selection committee was not in favour of appointment of petitioners on the post of lecturers from the date of appointment as ‘Teacher fellows’, but recommended the case of petitioners for their fresh appointment from the date of their interview. Thus, instead of regularizing the services of the petitioners in terms of the directions/observations made in aforesaid order passed in C.W.J.C. No. 1073 of 1997, the BPSC recommended for fresh appointment on the post of lecturer at basic pay-scale. The said recommendation of BPSC was sent to the State Government vide letter no. 2529 dated 24.02.1999 (Annexure- 18).

42. While taking the decision, B.P.S.C. ignored the findings/observations recorded in the aforesaid order passed in C.W.J.C. No. 1073 of 1997 that in the circumstances recorded therein, it will not be proper to deny regularization of appointment of the petitioners on a regular pay-scale. The B.P.S.C., instead of regularizing the appointment of the petitioners on a regular pay-scale, recommended fresh appointment and such action was contrary to the aforesaid order passed by this court in C.W.J.C. No. 1073 of 1997. It is not in dispute that the State Government twice sent the requisition to B.P.S.C. for absorption of the services of the petitioners as recorded in the order dated 09.10.1998 passed by this court in C.W.J.C. No. 1073 of 1997 itself.

43. The recommendation for fresh appointment by BPSC was followed by a notification issued by the State Government vide memo no. 408 dated 16.03.2000 (Annexure- 19) making appointment of the petitioners against vacant post of lecturers in the pay-scale of 2200-4000 temporarily and the petitioners were given fresh appointment.

44. This court is of the considered view that in the light of specific direction issued by this Court in the earlier round of litigation i.e. C.W.J.C. No. 1073 of

1997 disposed of on 09.10.1998 holding that it will not be proper to deny regularization of the appointment of the petitioners on a regular scale of pay and also holding that the State of Bihar as well as B.P.S.C. were to act in the light of the observation made in the order regarding grant of concurrence in the services of the petitioners within a stipulated time-frame, there was no scope for B.P.S.C. to deny regularization of the petitioners and simply give fresh appointment to the petitioners as Lecturers/Assistant Professors on a regular pay scale thereby denying the credit of past services to the petitioners.

45. Upon representation, the Respondent no.3 rejected the claim of the petitioners vide order dated 20.05.2002 solely on the ground that the posts of 'Teacher fellows' were neither a regular post nor any salary was prescribed for the said post and did not consider the points raised by the petitioners in the representation.

46. The petitioners filed another writ petition being W.P.(S) No. 5440 of 2002 challenging the aforesaid order dated 20.05.2002 and the writ petition was allowed vide judgement dated 01.02.2008 as contained in Annexure- 24. While disposing off the writ petition it has been clearly recorded as under:

"7. It is submitted on behalf of the petitioners that the order as contained in Annexure-26, rejecting the representation of the petitioners, is bad in law since it has been passed without proper application of mind. The Secretary, Department of Science and Technology, Jharkhand, Ranchi has ignored the communication and correspondence between the State Government and the Commission with respect to the proposal for absorption of the petitioners in the service. The documents as well as the several judgments submitted by the petitioners alongwith the representation have not been considered by respondent no. 3, Secretary, Department of Science and Technology, Jharkhand, Ranchi and, thereby, the petitioners have been deprived of their benefit of 21 years uninterrupted service rendered by them."

8. As ordered by this Court in the earlier writ petition, the issue was to be determined firstly by the Secretary, Department of Science and Technology, Government of Jharkhand, Ranchi but I find from the impugned order as contained in Annexure-26 that the claim of the petitioners have been rejected solely on the ground that the posts of Teachers Fellows was neither a regular post nor any salary was prescribed for the said post. From the said order it does not appear that respondent no. 3 has considered the points raised by the petitioners in the representation nor does it appear that he has considered the documents submitted by them alongwith the representation and, therefore, in my view, the impugned order as contained in Annexure-26 suffers from non-application of mind.

9. In this view of the matter, this writ application is allowed. The order as contained in Annexure-26 is hereby set aside and the matter is remitted back again to respondent no. 3, i.e. the Secretary, Department of Science and

Technology, Government of Jharkhand to consider the representation of the petitioners as well as the documents submitted by them alongwith the representation afresh and pass an appropriate order in accordance with law without being prejudiced by this order, as early as possible preferably within a period of three months from the date of receipt/production of a copy of this order.

In the facts and circumstances of the case, there shall be no order as to cost.”

47. Thereafter, the petitioners filed fresh representation as contained in Annexure- 25 to the Principal Secretary, Science and Technology Department, State of Jharkhand and requested the said authority to consider the past services of the petitioners for the purposes of pay-scale, salary, seniority and other consequential benefits. The said representation was rejected by the impugned order as contained in Annexure- 27 by referring to the recommendation made by B.P.S.C. and stating that BPSC has granted approval for regularization of the services of the petitioners from the date of issuance of notification dated 16.03.2000 without appreciating that BPSC did not grant regularization of the services of the petitioners but had granted fresh appointment to the petitioners and thereby taking away the benefits of past services of the petitioners.

It was also observed in the impugned order that by virtue of the Ordinance of 1986, the services of ad-hoc teachers were regularized from the date of their initial appointment, but the petitioners were not ad-hoc teachers and were rather ‘Teacher fellows’ and therefore, the benefit of Ordinance of 1986 could not be extended to the petitioners. The authority has further held that the ‘Teacher fellows’ and ad-hoc teachers stand on different footing and they cannot be compared and that B.P.S.C. had already refused to grant retrospective effect to the appointment of the petitioners so no useful purpose shall be served by sending the case of the petitioners again before the B.P.S.C.

48. The Respondent no.3 did not appreciate the fact that the order dated 09.10.1998 was passed in C.W.J.C. No. 1073 of 1997 making clear observation for regularization of the services of the petitioners and clearly holding that it will not be proper to deny regularization of their appointment on a regular scale of pay. The said direction was not by virtue of the scheme for regularization of Ad-hoc Lecturers/Assistant Professors but by virtue of the fact that it was undisputed by the respondents that the petitioners have been continuing in the post of teacher fellow since 1979 after their selection ; continuing their services on temporary basis on a fixed salary; they have been appointed through advertisement and after proper selection and continuing in service almost 20 years and in this background, it was held that it will not be proper to deny regularization of their appointment on a regular scale of pay.

49. It is not in dispute that the petitioners, who are fully qualified, have been engaged through a proper selection process and have been engaged in teaching work right from 1979 on fixed monthly payment, and the state Government had recommended to absorb the services of the petitioners against vacant post of

lecturers and thereby regularize the services of the petitioners but the Public Service Commission had ultimately declined the said request of the Government and recommended for fresh appointment giving benefit of 20 years work experience since 1979. It is not in dispute that the petitioners were appointed since 1979 against vacant post of lecturers (electrical engineering) for performing the teaching work, though termed as 'Teacher fellows', declared to be a non gazetted post. The Joint Secretary, Department of Science and Technology, Government of Bihar vide letter dated 15.03.1993 addressed to Secretary, B.P.S.C. had made a request to consider the case of the petitioners for absorption. In the said letter, the Joint Secretary also gave example of earlier lecturers (non-gazetted) who were appointed on salary basis were absorbed against vacant post of Assistant Professors and later on, proposal was sent to the Government for concurrence for their absorption as Assistant Professor vide letter no. 2544 dated 23.06.1971 and consequently, the commission conducted a limited interview of such persons and recommended for absorption of their services.

50. This Court is of the considered view that in the earlier round of litigation in C.W.J.C. No. 1073 of 1997 disposed of on 09.10.1998, in view of clear finding that it would not be proper for the respondents to deny regularization of their appointment on regular scale of pay, the B.P.S.C. while complying with the said order, was not justified in refusing to regularize the services of the petitioners and giving fresh appointment to the petitioners although the earlier recommendation of the state was in favour of the petitioners and was in line with the order dated 09.10.1998 passed by this court in C.W.J.C. No. 1073 of 1997. The order dated 09.10.1998 passed by this court in C.W.J.C. No. 1073 of 1997 has not been complied with by the respondents in its true letter and spirit

51. Considering the spirit of the order dated 09.10.1998 passed by this court in C.W.J.C. No. 1073 of 1997, the Respondent no.3 instead of rejecting the claim of the petitioners by the impugned order ought to have referred the matter back to the Public Service Commission for fresh consideration for regularization instead of fresh appointment in terms of the order dated 09.10.1998 passed in C.W.J.C. No. 1073 of 1997 read with order dated 01.02.2008 passed in W.P.(S) No. 5440 of 2002. The impugned order dated 25.09.2008 (Annexure-27) , being against the letter and spirit of the aforesaid two orders passed by the High Court in the earlier round of litigation, cannot be sustained in the eyes of law and is accordingly set-aside.

52. Considering the fact that the entire exercise was to be undertaken by the respondents in the light of judgement and order dated 09.10.1998 passed in C.W.J.C. No. 1073 of 1997 wherein after considering the entire facts and circumstances of the case of the petitioners it was clearly held that it will not be proper to deny regularization of the appointment of the petitioners on a regular scale of pay and considering the fact that the petitioners have already attained the age of superannuation and much time has elapsed, this Court holds the

petitioners entitled for benefit of their past services i.e engagement in teaching work from 1979 onwards rendered prior to their fresh appointment vide notification dated 16.03.2000, only for the purposes of calculation of their qualifying service for pension. The Respondent no.3 is directed do the needful to ensure compliance of this order within a period of 3 months from the date of receipt of a copy of this order.

53. This writ petition is accordingly disposed of.

54. Pending interlocutory application is closed.