

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 2629 OF 2023
(Arising out of SLP(C) No.6944 of 2023)**

THE STATE OF BIHAR AND OTHERS ...APPELLANT(S)

VERSUS

JAWAHAR LAL RAM AND OTHERS ...RESPONDENT(S)

WITH

**CIVIL APPEAL NO. 2630 OF 2023
(Arising out of SLP(C) No.6822 of 2023)**

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.
2. In the present appeals, the appellants have come to this Court, being aggrieved by the judgment and order dated 6th February 2023, passed by the Division Bench of the High Court of Judicature at Patna vide which the judgment and

order 17th February 2020 passed by the learned Single Judge of the High Court dismissing the writ petitions filed by the respondents herein has been reversed.

3. These appeals arise out of the peculiar facts and circumstances.

4. The parties are referred to herein as they are referred to in the original writ petition being CWJC No. 22943 of 2018.

5. The erstwhile Bihar Intermediate Education Council (hereinafter referred to as the 'Council') had gone for computerization and in pursuance thereof, the N.I.C.T. Computering System Private Limited was engaged for computerization work on contract basis.

6. The original writ petitioners were initially taken on service by N.I.C.T. and sent to the said Council for computerization work. They continued to work for the Council as employees of the said N.I.C.T. from 1999 to 2005.

7. Since the writ petitioners were working for a period of almost six years, the Council requested the Government to create different posts in the Computer Section of the Council. Accordingly, 63 posts came to be sanctioned in different grades. In the meanwhile, the contract between N.I.C.T. and

the Council came to be terminated in the year 2005. However, the respondents, who were earlier employees of the N.I.C.T. came to be appointed against the sanctioned posts by the Chairman of the Council.

8. Subsequently, the Government of Bihar decided to amalgamate Bihar School Education Examination Board along with the said Council. Accordingly, the Bihar Intermediate Education Council (Repeal) Act, 2007 (hereinafter referred to as the “said Act”) was enacted. As per the said Act, the Government of Bihar constituted a Committee of three Secretaries to formulate the scheme for regularization of the services of the employees, who were working in the said Council.

9. A scheme came to be framed for regularization under the Government Resolution dated 12th July 2012. It appears that, in terms of the said scheme, the services of the writ petitioners came to be terminated on 18th August 2017. Being aggrieved thereby, the writ petitioners filed the writ petition being CWJC No.12242 of 2017 before the High Court. The learned Single Judge, vide order dated 18th May 2018 partly allowed the writ petition and directed the State

Government to take a decision with regard to absorption of the services of the writ petitioners. Vide order dated 9th October 2018, the claim of the writ petitioners for regularization in service came to be rejected by the Education Department. Being aggrieved thereby, the CWJC No.22943 of 2018 was filed. The learned Single Judge, vide order dated 17th February 2020 dismissed the same. Being aggrieved thereby, a Letters Patent Appeal being No. 180 of 2021 was filed before the High Court by the original writ petitioners. The same was allowed by the Division Bench of the High Court. Hence, the present appeals.

10. We have heard Mr. Shyam Divan, learned Senior Counsel appearing on behalf of the appellants and Shri Dinesh Dwivedi, learned Senior Counsel appearing on behalf of the respondents-employees (writ petitioners).

11. Shri Shyam Divan submits that the reasoning given by the Division Bench of the High Court is totally perfunctory. He submits that the learned Single Judge, by an elaborate well-reasoned order, found that the writ petitioners were not entitled for absorption. He further submits that as per the scheme, four conditions were required to be fulfilled and the

writ petitioners did not comply with the said conditions. Finding this, the learned Single Judge dismissed the writ petition. He submits that the Division Bench, however, on a ground that, the report of the Committee was signed by only one member and not all the three members, has erroneously reversed the well-reasoned order passed by the learned Single Judge. He further submits that the personal affidavit filed by the Additional Chief Secretary of the State Government dated 6th December 2022 would reveal that the report of the Committee was accepted by the Cabinet of the State of Bihar and as such, the reasoning that, the report was not signed by all the three officers, is totally without substance.

12. Shri Dinesh Dwivedi, on the contrary, submits that the writ petitioners have been continuously working from 1999 till 2017. He submits that the writ petitioners have continuously worked for a period of almost 18 years. He submits that all the writ petitioners complied with all the four conditions, as stipulated in the Scheme of 2012. He further submits that the learned Single Judge, in the first round of litigation, has also found that the writ petitioners

complied with all the four conditions.

13. In the peculiar facts and circumstances, we are not inclined to go into the legal issues. At the outset, we may say that we are not satisfied with the manner in which the Division Bench has dealt with the matter in the present litigation. When the Division Bench was considering the well-reasoned order passed by the learned Single Judge, the least that was expected of it was to give reasonings as to why it disagreed with the findings given by the learned Single Judge.

14. Insofar as the finding of the Division Bench that the report was not signed by three members is concerned, it ought to have taken into consideration that much water had flown subsequently, inasmuch as the affidavit of the Additional Chief Secretary dated 6th December 2022 would have shown that the report of the Committee was accepted by the State Government, which was fructified in the scheme dated 12th July 2012, which was published in the gazette notification. As such, the High Court, at the most could have examined the correctness of the scheme as notified in the gazette notification. It appears that the Division Bench

found an easy way to deal with the litigation.

15. In any case, if the directions as issued by the Division Bench are to be complied with, it will lead to more than one complications. The Division Bench has granted liberty to the State Government to again start the process and in the meantime directed the writ petitioners to be taken back to work. It has further directed honorary benefits to be calculated and disbursed for the intervening period.

16. We are of the considered view that if the order, as passed by the Division Bench, is permitted to continue, it will give rise to third round of litigation and would not provide any solace to the employees, who have been fighting for justice from 2017.

17. The facts as recorded hereinabove would clearly show that the writ petitioners have been working since 1999 continuously in the said Council, may be initially from 1999 to 2005 they were working as employees of N.I.C.T. However, undisputedly they were working for the Council.

18. Subsequently, on account of the posts being sanctioned by the State for the Council and the contract between the Council and N.I.C.T. being terminated, they were absorbed

on the posts so sanctioned by the State Government. Undisputedly, the appointment was issued by the Chairman of the said Council, who was the competent authority.

19. On account of subsequent fortuitous development i.e. the merger of the Council with the Board, the petitioners became surplus and a scheme was required to be evolved for their absorption/regularization. Finally, a scheme was finalized and notified in the Official Gazette on 12th July 2012.

20. Even after the scheme was notified in the year 2012, the writ petitioners were permitted to continue to work till 2017 and only in the year 2017, their services came to be terminated.

21. It could thus be seen that the writ petitioners have been continuously working since 1999 i.e. much before the judgment in the case of **Secretary, State of Karnataka and Ors. v. Uma Devi (3) and Others**¹, was delivered on 10th April 2006.

22. Uprooting the writ petitioners at this stage of life would have devastating effects on them as well as on their families.

1 (2006) 4 SCC 1

23. In that view of the matter, we find that, in the present case, taking into consideration the peculiar facts and circumstances of the case and without this being treated as a precedent in any manner, a relief needs to be moulded so as to do complete justice.

24. We are, therefore, inclined to exercise our extraordinary powers under Article 142 of the Constitution of India and directed thus:

“The writ petitioners shall be absorbed on the posts on which they are appointed in the year 2005. They would be permitted to rejoin with effect from 1st May 2023. Though the writ petitioners would be entitled to continuity in service for all the purposes including retiral benefits, they would not be entitled for any backwages for the period during which they were out of employment.”

25. The appeals are disposed of in the above terms. Pending application(s), if any, shall stand disposed of.

.....J.
(B.R. GAVAI)

.....J.
(ARAVIND KUMAR)

**NEW DELHI;
APRIL 10, 2023**