

THE STATE OF BIHAR AND ORS.

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v.

BALIRAM SINGH & ORS.

(Civil Appeal No. 10806 of 2018)

OCTOBER 29, 2018

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**[A. M. KHANWILKAR AND L. NAGESWARA RAO, JJ.]**

*Service Law – Back Wages – Respondents appointed as Adult Education Supervisors – Posts of Adult Education Supervisor abolished – Challenge to – Appellants appointed the respondents in the Non-Formal Education Scheme – Said scheme abolished w.e.f. 1<sup>st</sup> April, 2001 – Respondents terminated – Policy decision by State Government on 20<sup>th</sup> May, 2005 to adjust all the retrenched employees – Respondents appointed pursuant to the letter dated 16<sup>th</sup> March, 2007 – Writ petition filed by respondents for direction against the appellants to make payment of salary to them for the period from 1<sup>st</sup> October, 2001 till 3<sup>rd</sup> July, 2007 and also to give continuity of past services to the respondents taking into account the same period – Writ petition allowed – On appeal, held: Respondents neither challenged the termination order after closure of the Non-Formal Education Scheme w.e.f. 1<sup>st</sup> April, 2001 nor the policy dated 20<sup>th</sup> May, 2005 under which they were appointed or the appointment letter dated 16<sup>th</sup> March, 2007 – They chose to file the subject writ petition only in 2013 and thus, it suffers from laches – Even the appointment letter dtd. 16<sup>th</sup> March, 2007 stated that the appointment was a fresh appointment and the past services would be reckoned only for the purpose of grant of pension and nothing more – Respondents acted upon such terms and conditions of appointment without any demurrer – Unless the respondents are reinstated in their previous post (held prior to 1<sup>st</sup> April, 2001), the question of awarding back-wages would not arise at all – Relief of back-wages is and can be linked only to the order of reinstatement – It cannot be awarded in isolation or during the period when the respondents were not in employment at all – Respondents not entitled to the reliefs as claimed.*

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A           **Allowing the appeal, the Court**

**HELD: 1.1** The respondents neither challenged the termination order after closure of the Non-Formal Education Scheme w.e.f. 1<sup>st</sup> April, 2001 nor the policy dated 20<sup>th</sup> May, 2005 under which they have been appointed or the appointment letter dated 16<sup>th</sup> March, 2007. Even the appointment letter dated 16<sup>th</sup> March, 2007 unambiguously predicates that the appointment was a fresh appointment and the past services would be reckoned only for the purpose of grant of pension and nothing more. The respondents acted upon such terms and conditions of appointment without any demurrer. Unless the respondents are to be reinstated in their previous post (held prior to 1<sup>st</sup> April, 2001), the question of awarding back-wages would not arise at all. The relief of back-wages is and can be linked only to the order of reinstatement. It cannot be awarded in isolation or during the period when the respondents were not in employment at all. [Para 18][64-A-D]

**1.2** *A fortiori*, the writ petition filed by the respondents was devoid of merits for more than one reason. First, it suffers from laches since it came to be filed only in the year 2013. Second, there is no challenge to the termination w.e.f. 1<sup>st</sup> April, 2001 and including the policy dated 20<sup>th</sup> May, 2005, or to the terms and conditions of appointment letter dated 16<sup>th</sup> March, 2007. No order of reinstatement could be passed in favour of the respondents and *sans* such an order, the respondents cannot be bestowed with back-wages for the period during which they were not in the employment of the appellants and also because they did not work during that period. Third, the scheme in respect of which the respondents were employed on temporary basis was closed w.e.f. 1<sup>st</sup> April, 2001. No order of reinstatement could be made much less of back-wages for the period subsequent thereto and until the engagement of the respondents on 16<sup>th</sup> March, 2007 in a new post. If the scheme in which they were employed has been abolished, by no stretch of imagination can the court direct payment of back-wages for the period after abolition of the scheme w.e.f. 1<sup>st</sup> April, 2001. Fourth, the principle of ‘no work, no pay’ would disentitle the respondents from the relief of back-wages. Fifth, the decision in *Smt. Ram Laxmi Mishra* case, is distinguishable on facts and, in any case, a relief wrongly granted

to the petitioner therein cannot be the basis to grant similar relief to the respondents herein, which is not in conformity with the extant regulations or policy, the dismissal of Special Leave Petition of the State by this Court in that case notwithstanding. Lastly, the principle underlying the decision of Supreme Court in *Arun Kumar* case, would apply *proprio vigore* to the case of the respondents. [Para 19][64-D-H; 65-A]

1.3 The respondents are not entitled to the reliefs as claimed, having acted upon the terms and conditions upon which they came to be engaged vide appointment letter dated 16<sup>th</sup> March, 2007. The impugned judgment and order passed by the High Court is quashed and set aside. [Paras 21, 22][67-A-B]

*Smt. Ram Laxmi Mishra v. State of Bihar and Ors.* decided on 29<sup>th</sup> August, 2005 in CWJC No.1712/2002 passed by the High Court of Judicature at Patna – distinguished.

*Ashwani Kumar and Ors. v. State of Bihar and Others* (1997) 2 SCC 1 : [1996] 10 Suppl. SCR 120 ; *The Bihar State Adult and Non-Formal Education Employees Association and Ors. v. The State of Bihar and Ors.* 1996 SCC Online Pat 235 ; (1996) 2 PLJR 394 ; *State of Bihar and Ors. v. Arun Kumar* decided on 29<sup>th</sup> August, 2005 in CWJC No.1712/2002 passed by the High Court of Judicature at Patna; *Binod Kumar Verma case*, decided on 14<sup>th</sup> February, 2005 in CWJC No. 15365 of 2001 passed by the High Court of Judicature at Patna ; *Krishnandan Singh case*, decided on 23<sup>rd</sup> May, 2003 in CWJC No.12469 of 2002 passed by the High Court of Judicature at Patna ; *Amar Nath Prasad Karn case*, decided on 10<sup>th</sup> July, 2017 in CWJC No.18490 of 2008 passed by the High Court of Judicature at Patna ; *Yogi Kamti & Sunil Kumar case*, decided on 11<sup>th</sup> July, 2017 in CWJC No. 18960 of 2008 and 18993 of 2008 passed by the High Court of Judicature at Patna ; *Asgar Ali case*, decided on 4<sup>th</sup> January, 2010 in WPS No.729 of 2004 by the High Court of Jharkhand – referred to.

A **Case Law Reference**

[1996] 10 Suppl. SCR 120 referred to Para 20

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10806 of 2018.

B From the Judgment and Order dated 15.01.2018 of the High Court of Judicature at Patna in LPA No. 2307 of 2016.

Ranjit Kumar, Sr. Adv., M. Shoeb Alam, Ujjwal Singh, Mojahid Karim Khan, Advs. for the Appellants.

C Navaniti Prasad Singh, Sr. Adv., Devash Bharuka, Justin, Vaibhav Niti, Devashish Bharuka, Advs. for the Respondents.

The Judgment of the Court was delivered by

**A. M. KHANWILKAR, J.** 1. Leave granted.

D 2. This appeal arises from the final judgment and order dated 15<sup>th</sup> January, 2018 in L.P.A. No.2307 of 2016 passed by the Division Bench of the High Court of Judicature at Patna whereby the judgment and order passed by the Single Judge in Civil Writ Jurisdiction Case No.22208 of 2013 dated 22<sup>nd</sup> August, 2016 allowing the writ petition preferred by the respondents *inter alia* for relief of payment of salary for the period from 1<sup>st</sup> October, 2001 till 3<sup>rd</sup> July, 2007 and consequently directing the appellants to pay the amount towards salary for the said period had been upheld.

E 3. The respondents filed a writ petition initially praying for a direction against the appellants to make payment of salary to them for the period from 1<sup>st</sup> October, 2001 till 3<sup>rd</sup> July, 2007, along with statutory interest. By way of an amendment, a further relief was claimed to issue a writ of mandamus to the appellants to give continuity of past services to the respondents taking into account the period from 1<sup>st</sup> October, 2001 till 3<sup>rd</sup> July, 2007 for the purpose of making payment of salary to the respondents for the said period. The respondents asserted that they were appointed as Adult Education Supervisors between 1981 and 1987 pursuant to advertisements published between 1979 and 1983. It is stated that 771 posts of Adult Education Supervisor were abolished in terms of the decision of the State Government after adjusting the remaining 367 supervisors who continued to work until the abolition of the posts in the year 1991.

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4. These termination orders were challenged by the association of the respondents, namely, the Bihar State Adult and Non-Formal Education Employees Association, by way of CWJC No.5036 of 1992. That writ petition was disposed of along with connected cases vide judgment dated 24<sup>th</sup> May, 1996<sup>1</sup>. Paragraph Nos.36 and 37 of the judgment read thus:

“36. There is no doubt that petitioners’ initial appointments were made to a scheme which was purely temporary, therefore, it may not be possible for me to ask the respondent authorities to regularize their services. But I have already noticed that their appointments were made as per the prescribed norms of the Government after proper advertisement etc. I have also noticed that having regard to their past services rendered continuously for ten to fourteen years, the State authorities had themselves absorbed at least 771 of such Supervisors and for rest steps were under contemplation. Petitioners have also been able to establish successfully that the decision of the authorities to cancel such adjustment was not only malafide rather shameful. But now a stand is being taken by the respondents that those 771 posts were also temporary hence a decision was taken to terminate the petitioners. Therefore, in these backgrounds, it would not be proper to quash the order of petitioners’ termination.

37. But it cannot be ignored that having regard to the long services rendered by the petitioners, administrative authorities had suggested steps for their absorption even in other departments. Therefore, having taken into consideration entire facts and circumstances of the case, I dispose of the writ petitions with the following direction to the respondent-authorities: (a) to allow the petitioners and interveners to continue against these 771 posts, against which they were adjusted in terms of the letter of the concerned department, dated 19<sup>th</sup> December, 1990. But such adjustment is to be made as per their seniority or (b) in case those posts have also been abolished, take steps to absorb/adjust the petitioners along with the interveners in a similar manner, the employees of Consolidation Department were adjusted or (c) if for any justified reason condition nos. (a) or (b) are not possible, take a decision

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<sup>1</sup> *The Bihar State Adult and Non-Formal Education Employees Association and Ors. Vs. The State of Bihar and Ors.* 1996 SCC Online Pat 235;(1996) 2 PLJR 394

A similar to the State of Uttar Pradesh, which I have already indicated in paragraph no.18 of this order and adjust/absorb them accordingly. But in the facts and circumstances of the case, I could not persuade myself to quash the impugned order. With the aforesaid directions/observations, these writ applications are, thus, disposed of. But the parties are left to bear their own costs.”

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5. Consequent to the said decision, the appellants appointed the respondents in the Non-Formal Education Scheme/Adult Education Scheme vide order dated 15<sup>th</sup> March, 1998. The said order reads thus:

C “The Government of Bihar  
Secondary, Primary and Adult Education Department  
Office Order

Patna, date: 15<sup>th</sup> March, 98

No.24/Mu. 5-042/92 P.E. 112/C.W.J.C.-5036/92

D 1. In the light of order passed on the date of 24.5.96 by the Hon’ble Patna High Court in C.W.J.C. No.-5036/92 and other annexed petitions and in the light of order passed on the date of 26.11.97 in M.J.C. No.-2884/96 and 3172/96, against the sanctioned and vacant posts of the Project Officers, under Informal Dist. Public Education Program under Public Education Directorate, to the following service relieved Adult Education Supervisors along with the other allowances payable from time to time by the Government, in pay-scale-1600-50-2300-60-2700, making appointment in temporary way on the post of Project Officer under Informal Education, order is passed to make joining in Public Education Directorate, Bihar Patna.

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S.N.	Name	Amended/Provisional	Home District	Dist. From where retrenchment was made
1.	Mrs. Kalyani Devi	1	Bhagalpur	Pakud
2.		2		
3.		3		
4.				
5.				
453	Mr. Panna Lal Yadav	500	W. Singhbhum	W. Singhbhum

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2. Aforesaid all appointed employees at the time of joining, shall submit necessarily Medical Certificate issued by Civil Surgeon. A

**3. This appointment shall be deemed fresh appointment, resultantly their earlier services shall not be calculated for their pension,/ promotion/ time bound promotion etc.**

4. If by the aforesaid employees, their earlier charges are not handed over, then only after handing over earlier charge, joining shall be made at new posted place. B

**5. To all aforesaid employees only starting salary of pay-scale mentioned in this letter shall be payable immediately.** C

6. The service of all aforesaid employees shall be under policy and principle of Informal Education Program/Adult Education Program.

**7. The service conditions of aforesaid all appointed employees shall be deemed under circulars issued earlier in the context of retrenchment and adjustment by the Personnel Department and Finance Department.** D

8. On being any kind of alteration in Sl. No. in amended Provisional Seniority List prepared by Public Education Directorate, Bihar, Patna, alteration may be made in the post of employees mentioned in this letter also. E

9. If during review by Public Education Directorate, proof is found of arrear or defalcation against any aforesaid employee, then action shall be taken for its recovery. If against any employee serious charges are found or their service is found unsatisfactory, then their service may be terminated. F

10. The aforesaid appointed employees shall submit affidavit in the context of their appointment at the time of joining stating therein that, their appointment is made in formal way and as per rule and if in future their appointment is found illegal/irregular, then their service shall be terminated and they shall be liable to punishment. G

**11. The employee who was appointed on the post of Project Officer, under informal education for the period of three years on the basis of contract earlier in category of Adult**

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A **Education Supervisor and whose service was extended up to December, 97, his appointment also shall be deemed fresh appointment.**

B **12. Aforesaid all appointed employees shall make joining in Public Education Directorate, Bihar, Patna within one month from date of issuance of this letter, otherwise their appointment shall be terminated.**

Sd./-dated 15-3-98

[Vishnu Kumar]

Director, Public Education, Bihar, Patna

C Memo no.-412/Patna, Date: 15 March 1998  
Copy sent to;-Accountant General, Bihar, Patna/Ranchi for information and necessary action.

Sd./-dated 15-3-98

[Vishnu Kumar]

Director, Public Education, Bihar, Patna

D Memo no.-412/Patna, Date: 15 March 1998  
Copy sent to:- The Treasury Officer, Vikas Bhawan, Patna Secretariat for information and necessary action.

Sd./-dated 15-3-98

[Vishnu Kumar]

Director, Public Education, Bihar, Patna

E Memo no.-412/Patna, Date: 15 March 1998  
Copy sent to:- All Dist. Magistrates/all Dy. Development Commissioner/all Dist. Public Education Officer/all Assistant Director, Informal Education for information and necessary action.

Sd./-dated 15-3-98

[Vishnu Kumar]

Director, Public Education, Bihar, Patna

F Memo no.-412/Patna, Date: 15 March 1998  
Copy sent to:- All concerned employees.....for information and necessary action.

Sd./-dated 15-3-98

[Vishnu Kumar]

Director, Public Education, Bihar, Patna

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THE STATE OF BIHAR AND ORS. v. BALIRAM SINGH & ORS. 53  
[A. M. KHANWILKAR, J.]

Memo no.-412/Patna, Date: 15 March 1998 A  
Copy sent to:- The Secretary, Secondary, Primary and Adult  
Education Department, Bihar, Patna for information and necessary  
action.

Sd./-dated 15-3-98  
[Vishnu Kumar] B  
Director, Public Education, Bihar, Patna

Memo no.-412/Patna, Date: 15 March 1998  
[True Translated Copy]”  
(emphasis supplied)

6. Be it noted that the appointment of the respondents to the post of Project Officer was a fresh appointment. The respondents accepted the said terms and conditions of appointment and none of the respondents challenged the same. The scheme, in respect of which the respondents were appointed, was abolished w.e.f. 1<sup>st</sup> April, 2001, as a result of which all of them came to be terminated. The respondents, however, neither challenged the policy decision to abolish the scheme under which the Informal Education Programme Scheme was implemented by the State Government nor their termination order. Indeed, some of the affected persons challenged their order of termination by way of writ petitions. We shall advert to this aspect a little latter. C  
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7. It is indisputable that the State Government took a policy decision on 20<sup>th</sup> May, 2005 to adjust all the 1427 retrenched employees. The policy is reflected in the resolution, which reads thus: E

“State of Bihar  
Department of Human Resources Development  
(Primary and Adult Education)  
Resolution F  
Patna Dated:- May, 2005.

Like other states in State of Bihar, Informal Education Program in the form of Central sponsored programe was managed in order to arrange primary education to such children who are aged about 6-14 years and not going to government school for study. Central Government and State Government were bearing the expenses incurred in this programe in specified ratio. The Central Government has taken decision to stop Informal Education Programe and to regulate the Education Guarantee Program/ H

A Objective and Navachari Education Programme with effect from 01.04.2001 for the purpose of this object. Subsequently the following employees for informal Education Program were retrenched with effect from 01.04.2001.

B S. No.	Post Name	Req. qualification	Salary	No. Reentrant Emp.
1.	Project Officer	Graduation	5,000-8,000	316
2.	Clerk Cum Accnt.	Matric	4,000-6,000	346
3.	Clerk Cum Typist	Matric	4,000-6,000	346
C 4.	Stenographer	Matric	4,000-6,000	1
5.	Driver	Literate	3,050-4,590	30
6.	Peon	Literate	2,550-3,200	370
Total				1,427

D 2. The matter of a adjustment of 1427 retrenched employees under the aforesaid explained in formal education programme was pending before the government. State government has taken decision for adjustment of the retrenched employees against the available vacancies in different departments in the following manners:-

E J. The concerned retrenched employee shall be adjusted on such post for which he possesses the required prescribed educational qualification and no new post shall be created for him.

F B. They shall be adjusted for the same salary at which they were retrenched. In case of unavailability of post/vacancy and upon furnishing their written consent, retrenched employees shall also be adjusted at minimum salary.

G C. The reservation roster shall, necessarily be complied with. The retrenched employees shall be adjusted against the roster point of the same class, they belong to.

H D. The maximum limit of age shall be exhausted for adjustment.

E. In the light recommendation of personnel and administrative reforms department, as per the definition of retrenched employees mentioned in their resolution no.-209 dated 06.07.92, Public Education Director shall prepare, self sufficient panel,

in the light of advice of learned counsel, all 1,427 employees A  
have been deemed to be retrenched.

F. The direct recruitment shall not be-stopped in series of  
adjustment in different departments. The Public Education  
Director shall initiate proceedings to mark the post for the  
purpose of adjustment in different departments. B

G. Consent of Bihar Employees Selection Commission is not  
necessary in filing the marked post through adjustment.

H. According to availability of vacancies, the appointments  
shall be made from such panel time to time through adjustment  
after obtaining the approval of chief secretary. Chief Secretary C  
must be empowered by the governor or Council of Ministers  
of State for giving such approval.

**I. The adjustment of retrenched employees shall be  
deemed to be a new appointment. They shall not get the  
benefit of seniority on the basis of their service before D  
being retrenched. But the period of service prior to  
retrenchment shall be used for pension purpose.**

J. The retrenched employees whose immediate adjustment is  
not done due to unavailability of vacancy, after preparing their  
list they shall be adjusted against vacancy post available in E  
next five years.

By the order of Governor of Bihar.  
SD/illegible-Vijay Prakash  
Secretary  
Primary and Adult Education F  
20/5/2005"  
(emphasis supplied)

8. Even this policy makes it amply clear that the adjustment of  
retrenched employees was to be a new appointment and the employees  
would not get the benefit of seniority on the basis of their services before G  
being retrenched. However, the period of service prior to retrenchment  
would be reckoned for pension purposes only. Even this policy has not  
been challenged by the respondents.

9. The respondents eventually came to be appointed pursuant to  
the letter dated 16<sup>th</sup> March, 2007. The said letter reads thus: H

A “Letter no.-13/Est. 15-05/06 270/  
The Government of Bihar  
Human Resource Development Department

From,

Dr. Madan Mohan Jha

B Commissioner-cum-Secretary.

To,

Commissioner-cum-Secretary,  
Food and Supply Department,  
Bihar, Patna.

C Patna, Date: 16 March, 2007

Subject:- About the adjustment on the posts equivalent of Supervisors of Adult Public Education, in the compliance of order passed by the Hon’ble Patna High Court in C.W.J.C. No.-5036/92 and M.J.C. No.-2884/96, in course of Resolution No.-582 dated 20.05.05 and 1638 dated 11.10.06 passed by the State Government.

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Sir,

1. In the context of aforesaid subjects, as per instruction, it is to say that, a decision is taken by the State Government of re-adjustment against the vacant posts equivalent to supervisory category under different departments, of the employees of concerned Adult Education Supervisor Category, in context of which decision was taken of adjustment in other departments as consequence of conclusion of Informal Education Program with effect from date 01.04.01 and whose adjustment was made in year 1998 under Informal Education Program on account of wants of posts, for some time against the post of clerk, the employees of Adult Education Supervisor Category, concerned with Resolution No.-582 dated 20.05.05 for the adjustment against the vacancies available in different Departments/Offices, of retrenched employees of Informal Education Program. In this context, the copy of Resolution No.-582 dated 20.05.05 and Resolution No.-1638 dated 11.10.06 are annexed.

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Vide Letter No.-646 dated 25.03.05 of the Food and Supply Department, on the basis of said decision of the Government and option received for adjustment from employees against the

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communicated rest vacancies of Supply Inspector, for the appointment/adjustment in pay-scale [5000-8000] against vacant posts of Supply Inspector, under Food and Supply Department, of the following retrenched employees of Adult Education Supervisory Category:-

S. No.	Name	Reservation Category	D.O.B.	Home Dist.	Date of First joining on the post of Adult Education Supervisor	Presently in which office department adjusted or to be adjusted
1.	Swarn Lata Fransis	S.T.	25.06.58	Kodrama	01.03.82	Clerk in the Office of D.S.I. Samastipur
2.	Dinesh Chandra Manjhi	S.T.	02.04.56	Giridih	05.03.82	R.D.E.D. Darbhanga
3.	Rasique Murm	S.T.	03.01.57	Dumka	13.04.82	R.D.E.D. Darbhanga
4.	Munshi Murmu	S.T.	03.01.57	Dumka	14.04.82	R.D.E.D. Darbhanga
5.	Thiyophil Tuddu	S.T.	12.08.49	Dumka	15.04.82	Clerk in the Office of S. Madhubani
6.	Timothy Marandi	S.T.	19.04.55	Dumka	27.01.83	Clerk in the P.T.E.C. Ghoghradih Madhubani
7.	Jagrath Singh	S.T.	16.01.58	Ranchi	01.09.84	R.D.E.D. Darbhanga
8.	Kumari Usha Kiran	W.B.C.-1	05.06.56	Patna	21.05.80	W. Supervisor C.D.P. Badhara Bhojpur
9.	Bhagwan Osta	B.C.-1	16.07.49	Dumka	15.06.81	Office of Dist. Magistrate, Katihar
10.	Radha Prasad Verma	B.C.-1	30.07.51	Palamu	15.01.82	Dis. Magistrate Purnia
11.	Devendra Thakur	B.C.-1	09.03.54	Bhojpur	06.08.82	Recommended in Welfare Department
12.	Muneshwar Prasad	B.C.-1	25.09.52	Gaya	06.08.82	Clerk in Sub Divisional Office Masaodi
13.	Moise Ansari	B.C.-1	05.02.57	E. Champaran	06.08.82	Dist. Magistrate Gopalganj
14.	Ramayan Choudhary	B.C.-1	03.12.55	W. Champaran	07.08.82	Dist. Magistrate W. Champaran
15.	Arjun Mahto	B.C.-2	24.01.58	Palamu	15.01.82	Welfare Department
16.	Arvind Kumar	B.C.-2	02.01.59	Ranchi	15.01.82	Recommended on the post of accountant welfare department
17.	Krishna Kumari	B.C.-2	30.08.56	Vaishali	27.02.82	Welfare Department
18.	Raj Kishore	B.C.-2	09.08.59	Hazaribagh	01.03.82	Recommended on the post of clerk in Youth sports art & cultural depart.
19.	Manohar Ram Madani	B.C.-2	18.07.55	Giridih	03.03.82	Clerk in 04 Bihar Batalian N.C.C. Bhagalpur
20.	Gangadhar Mandal	B.C.-2	10.09.58	Dhanbad	05.03.82	Clerk in Office of 23 Bihar Batalian N.C.C. Bhagalpur

A	21.	Abdula Kasmi	B.C.-2	11.04.55	Ranchi	22.03.82	Recommended on the post of accountant in welfare department
	22.	Sudhir Kumar Gupta	B.C.-2	31.12.48	Bhagalpur	13.04.82	Recommended on the post of clerk in Youth Sports Art & Culture Depart.
B	23.	Om Prakash Mandal	B.C.-2	24.05.54	Deoghar	14.04.82	Recommended on the post of clerk in Youth Sports Art & Culture Depart.
	24.	Ganesh Prasad Umar	B.C.-2	02.01.52	Deoghar	20.04.82	Recommended on the post of clerk in Youth Sports Art & Culture Depart.
C	25.	Suraj Prasad	B.C.-2	22.06.48	E. Champaran	06.08.82	D.M. W. Champaran
	26.	Sudha Rani Jaiswal	B.C.-2	01.08.52	E. Champaran	06.08.82	Recommended on the post of clerk in Youth Sports Art & Culture Depart.
	27.	Krishna Kumar Prasad	B.C.-2	08.06.53	Gopalganj	06.08.82	Recommended in Welfare Department
D	28.	Narendra Dev	B.C.-2	28.01.56	Nalanda	06.08.82	Recommended in Welfare Department
	29.	Dasrath Singh Yadav	B.C.-2	15.10.57	Palamu	26.12.82	Recommended on the post of clerk in welfare department
	30.	Kamal Kumar Jaisawal	B.C.-2	02.03.61	Godda	27.01.83	Welfare department
	31.	Rama Mahto	B.C.-2	07.07.50	Palamu	01.05.83	Welfare department
	32.	Dilip Kumar Maiti	B.C.-2	11.04.58	E. Singhbhum	24.08.84	Recommended in Welfare Department
E	33.	Shoukat Ara	B.C.-2	16.03.48	Purnia	02.02.85	Recommended in Welfare Department
	34.	Nares h Kr. Jaiswal	B.C.-2	05.01.58	Saharsa	18.04.85	Recommended in Welfare Department
	35.	Mira Kumara	General	19.07.50	Purnia	05.02.80	Child Development Office, Purnia
	36.	Dineshwar Pathak	General	17.08.54	E. Champaran	11.06.81	D.M. Office Purnia
F	37.	Krishna Kumar	General	01.08.55	Palamu	15.01.82	Youth sports, art & culture depart.
	38.	Sharmasiptan su Konar	General	01.01.54	Dhanbad	27.02.82	I.C.D.S. Social Welfare Department, Bihar
	39.	Vinod Kumar	General	28.06.53	Dhanbad	01.03.82	I.C.D.S. Social Welfare Department, Bihar
	40.	Anand Singh Choudhary	General	05.02.58	Dhanbad	08.03.82	I.C.D.S. Social Welfare Department, Bihar
	41.	Satish Kumar Sinha	General	15.11.55	Dhanbad	13.04.82	I.C.D.S. Social Welfare Department, Bihar
G	42.	Ajjur Rahman	General	02.06.50	Dumka	19.04.82	D.E.O. Office Munger
	43.	Nand Kishore Mishra	General	01.06.50	Dumka	20.04.82	Welfare Department
	44.	Vimla Devi	General	05.06.55	Gaya	06.08.82	Collectariate Patna
	45.	Baliram Singh	General	13.10.55	Gopalganj	06.08.82	Recommended in Gopalganj Collectariate
H	46.	Radha Krishna Mishra	General	01.05.57	Gopalganj	06.08.82	Gopalganj Collectariate

1. In the adjustment, compliance of Reservation roster shall be mandatory. Retrenched employee shall be adjusted/appointed against roster point of same category of reservation to which they belong. A

**2. Their adjustment shall be deemed new appointment and on the basis of their service prior to retrenchment benefit of seniority shall not be permissible to them but their service prior to retrenchment shall be calculated for the purpose of pension.** B

3. All employees were under the control of Dist. Public Education Officer/Public Education directorate. So Joining of all employees should be accepted at their new place only after receiving No Objection Certificate issued by Dist. Public Education Officer/Public Education Directorate. The employees who have made joining in any other department earlier as result of adjustment, such employees shall produce No Objection Certificate issued from concerned Office. C  
D

4. After the appointment of aforesaid employees, copy of appointment letter send immediately to the under signatory, so that, information should be sent to the Hon'ble High Court.

5. On finding any kind of discrepancy, inform immediately, so that, it may be resolved immediately. E

Sincerely  
Sd./-dated 16/03/07  
[Dr. Madan Mohan Jha]  
Commissioner & Secretary F

Memo No.270, Patna Date: 16 March, 2007"

(emphasis supplied)

10. This appointment letter reiterated the position that the appointment/adjustment of the respondents was to be a new appointment and, on the basis of their service prior to retrenchment, benefit of seniority would not be permissible to them but it would be reckoned only for the purpose of pension. The respondents acted upon the said conditions and did not challenge the same. The writ petition, however, came to be filed only in 2013, being CWJC No.22208 of 2013, for the following reliefs: G

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A “i) To issue an appropriate writ/order/direction in the nature of Mandamus commanding the respondents to make payment of salary to the petitioners of the period 1.10.2001 to 3.7.2007 with statutory interest.

B ii) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.”

The respondents sought further relief by way of an amendment, which reads thus:

C “1.(iii). To issue an appropriate writ/order/direction in the nature of mandamus commanding the Respondents to give continuity of past services of the Petitioners taking into account the period 2001-2007, for the purpose of making payment of salary to the Petitioners of the said period.”

D 11. The sole basis to buttress the relief as claimed was that in the case of *Smt. Ram Laxmi Mishra Vs. State of Bihar and Ors.*<sup>2</sup> similar reliefs had been granted and the respondents were similarly placed. The writ petition filed by the respondents was resisted by the appellants by *inter alia* placing reliance on the decision of this Court in the case of *State of Bihar and Ors. Vs. Arun Kumar*<sup>3</sup>. According to the appellants, no relief could be granted to the respondents as they were appointed as per the policy articulated in communication dated 20<sup>th</sup> May, 2005 and including the terms and conditions of appointment noted in the communication dated 16<sup>th</sup> March, 2007. Inasmuch as, the respondents acted upon the terms and conditions of fresh appointment without any demurrer. Further, the case of the respondents was not similar to the factual matrix involved in the case of *Smt. Ram Laxmi Mishra* (supra).  
 E  
 F In any case, no relief can be granted in the fact situation of the present case by invoking Article 14 or 16 of the Constitution of India.

G 12. Even though the learned Single Judge of the High Court noted the argument of the appellants that, in a similar case of *Arun Kumar* (supra), this Court had refused to grant relief of back-wages, but nevertheless proceeded to answer the matters in issue by holding that the appellants could not point out the factual difference between the case of *Smt. Ram Laxmi Mishra* (supra) and that of the respondents. Further, the decision in *Smt. Ram Laxmi Mishra* (supra) had been

<sup>2</sup>Decided on 29<sup>th</sup> August, 2005 in CWJC No. 1712/2002 passed by the High Court of Judicature at Patna.

H <sup>3</sup>Decided on March 2, 2016 in Civil Appeal No. 2433 of 2016 and connected appeals.



affirmed right up to this Court by dismissal of the Special Leave Petition being SLP (Civil) No.18429 of 2009 on 24<sup>th</sup> July, 2009. On that basis alone, the writ petition came to be allowed. Thus, the reliefs claimed in the writ petition were granted to the respondents by directing the appellants to pay salary for the period from 1<sup>st</sup> October, 2001 till 3<sup>rd</sup> July, 2007. A

13. The appellants, therefore, carried the matter in appeal by way of Letters Patent Appeal No.2307 of 2016 before the Division Bench of the High Court. The Division Bench also disposed of the appeal vide impugned judgment and order dated 15<sup>th</sup> January, 2018, which reads thus: B

“Heard counsel for the State, the appellants, as well as the private respondents. C

Since the learned single Judge allowed the writ application, gave a direction for payment of salary for the period 01.10.2001 to 03.07.2007 in conformity with a similar decision passed in the case of Smt. Ram Laxmi Mishra, which order in turn even upheld by the Division Bench as well as by the Hon’ble Apex Court. In the interest of maintaining consistency in identical situation, the learned single Judge has committed no error in allowing the writ application and granted direction for payment for the period indicated above. D E

We do not find any infirmity in the order. The appeal is dismissed.”

14. The appellants would contend that the sole basis on which the High Court granted reliefs to the respondents is tenuous. For, the factual matrix involved in the case of *Smt. Ram Laxmi Mishra* (supra), is inapplicable to the case of the respondents and moreso, unlike in the case of *Smt. Ram Laxmi Mishra* (supra), the respondents not only failed to challenge the termination order passed against them consequent to abolition of the scheme w.e.f. 1<sup>st</sup> April, 2001 but also failed to challenge both, the policy of the State articulated in communication dated 20<sup>th</sup> May, 2005 and the terms and conditions of the letter of appointment dated 16<sup>th</sup> March, 2007. Having failed to do so, the respondents were not entitled to any relief whatsoever. Besides, the cause of action first arose in 2001, then in May 2005 and again, in March 2007, but the writ petition seeking relief of back-wages for the stated period came to be filed by the respondents, without challenging the termination order or the F G H

A policy, for the first time in the year 2013. In other words, the writ petition filed by the respondents also suffered from laches. It is then contended that in the case of **Smt. Ram Laxmi Mishra** (supra), the High Court directed reinstatement and, as a consequential relief, ordered payment of back-wages, after setting aside the termination order. In the present case, there is no challenge against the termination order or the terms and conditions specified in the appointment letter dated 16<sup>th</sup> March, 2007, being fresh appointment of the respondents. If it is not a case of reinstatement, the question of granting back-wages for the stated period would not arise. Moreover, since the respondents had not worked during the relevant period at all, the principle of ‘no work, no pay’ would inevitably come into play.

15. The respondents, on the other hand, would contend that the High Court, while granting relief to the respondents, has placed reliance on the dictum in the judgment rendered in **Smt. Ram Laxmi Mishra** (supra). That judgment has been upheld by this Court by dismissal of Special Leave Petition (Civil) No.18429 of 2009 on 24<sup>th</sup> July, 2009. Further, the High Court while deciding the case of **Smt. Ram Laxmi Mishra** (supra) had adverted to the decision of the same High Court in the case of **Binod Kumar Verma**<sup>4</sup>, which decision has also been affirmed by this Court by dismissal of Special Leave Petition (Civil) No.11560 of 2005 on 16<sup>th</sup> December, 2005. Reliance has also been placed on the decision of the same High Court in **Krishnandan Singh**<sup>5</sup> and also on the decisions rendered in **Amar Nath Prasad Karn**<sup>6</sup>, **Yogi Kamti & Sunil Kumar**<sup>7</sup> and **Asgar Ali**<sup>8</sup>. The decision in **Asgar Ali** has been affirmed by this Court by dismissal of Special Leave Petition (C) CC Nos.10361-10364 of 2014 on 18<sup>th</sup> July, 2014. Further, the decision of the High Court of Jharkhand at Ranchi in LPA No.359/2009 dated 10<sup>th</sup> October, 2009 came to be affirmed by dismissal of SLP (C) No.1377 of 2011 on 2<sup>nd</sup> August, 2013. As regards the decision of this Court in **State**

<sup>4</sup>Decided on 14<sup>th</sup> February, 2005 in CWJC No. 15365 of 2001 passed by the High Court of Judicature at Patna.

<sup>5</sup>Decided on 23<sup>rd</sup> May, 2003 in CWJC No. 12469 of 2002 passed by the High Court of Judicature at Patna.

<sup>6</sup>Decided on 10<sup>th</sup> July, 2017 in CWJC No. 18490 of 2008 passed by the High Court of Judicature at Patna.

<sup>7</sup>Decided on 11<sup>th</sup> July, 2017 in CWJC No. 18960 of 2008 passed by the High Court of Judicature at Patna.

<sup>8</sup>Decided on 4<sup>th</sup> January, 2010 in WPS No. 729 of 2004 passed by the High Court of Jharkhand.

*of Bihar & Ors. Vs. Arun Kumar* (supra), and connected cases, it is submitted that the same is distinguishable. According to the respondents, the appointment of Smt. Ram Laxmi Mishra and other petitioners who succeeded before the High Court was on the same terms and conditions consequent to the policy dated 20<sup>th</sup> May, 2005. The respondents submitted that no fault could be found with the impugned decision of the High Court for having followed the decision in *Smt. Ram Laxmi Mishra* (supra), which has been upheld by this Court by dismissal of the concerned Special Leave Petition. It is, therefore, prayed that the appeal be dismissed, being devoid of merits.

16. We have heard Mr. Ranjit Kumar, learned senior counsel appearing for the appellants and Mr. Navaniti Prasad Singh, learned senior counsel appearing for the respondents.

17. The principal issue that arises for consideration is whether the reliefs as prayed for can be granted to the respondents, who not only failed to challenge the termination w.e.f. 1<sup>st</sup> April, 2001 pursuant to the policy decision of the State Government at the relevant time but also failed to challenge the latest policy decision of the State Government noted in communication dated 20<sup>th</sup> May, 2005, regarding adjustment of the terminated employees on terms and conditions stipulated thereunder and including the terms and conditions specified in the appointment letter dated 16<sup>th</sup> March, 2007. Neither the single Judge nor the Division Bench of the High Court has dilated on this aspect at all. The learned Single Judge mechanically followed the decision in *Smt. Ram Laxmi Mishra* (supra). What has been completely glossed over by the learned Single Judge as well as the Division Bench in the present case is that the writ petition filed in *Smt. Ram Laxmi Mishra* (supra), was to challenge the order of termination dated 1<sup>st</sup> April, 2001, in which the said petitioner succeeded in establishing that her initial appointment was in the Adult Education Scheme and not in the Non-Formal Education Scheme. What weighed with the High Court in that case was that the closure of the Non-Formal Education Scheme in which the concerned petitioner was working at the relevant time, would not affect her service condition in the cadre of Adult Education Scheme. Notably, in *Smt. Ram Laxmi Mishra* (supra), the petitioner succeeded in the challenge to her termination order and it came to be set aside with consequential reliefs of reinstatement and monetary benefits, which included back-wages for the relevant period.

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A 18. In the present case, however, the respondents have neither  
challenged the termination order after closure of the Non-Formal  
Education Scheme w.e.f. 1<sup>st</sup> April, 2001 nor the policy dated 20<sup>th</sup> May,  
2005 under which they have been appointed or the appointment letter  
dated 16<sup>th</sup> March, 2007. Even the appointment letter dated 16<sup>th</sup> March,  
B 2007 unambiguously predicates that the appointment was a fresh  
appointment and the past services would be reckoned only for the purpose  
of grant of pension and nothing more. Indisputably, the respondents acted  
upon such terms and conditions of appointment without any demurrer.  
They chose to file the subject writ petition only in the year 2013, when  
the cause of action first arose on 1<sup>st</sup> April, 2001, then on 20<sup>th</sup> May, 2005  
C and once again, on 16<sup>th</sup> March, 2007. Unless the respondents are to be  
reinstated in their previous post (held prior to 1<sup>st</sup> April, 2001), the question  
of awarding back-wages would not arise at all. The relief of back-wages  
is and can be linked only to the order of reinstatement. It cannot be  
awarded in isolation or, for that matter, during the period when the  
D respondents were not in employment at all.

19. *A fortiori*, we have no hesitation in taking the view that the  
writ petition filed by the respondents for the stated reliefs is devoid of  
merits for more than one reason. First, it suffers from laches since it  
came to be filed only in the year 2013. Second, there is no challenge to  
E the termination w.e.f. 1<sup>st</sup> April, 2001 and including the policy dated 20<sup>th</sup>  
May, 2005, or to the terms and conditions of appointment letter dated  
16<sup>th</sup> March, 2007. No order of reinstatement could be passed in favour  
of the respondents and *sans* such an order, the respondents cannot be  
bestowed with back-wages for the period during which they were not in  
the employment of the appellants and also because they did not work  
F during that period. Third, the scheme in respect of which the respondents  
were employed on temporary basis was closed w.e.f. 1<sup>st</sup> April, 2001. No  
order of reinstatement could be made much less of back-wages for the  
period subsequent thereto and until the engagement of the respondents  
on 16<sup>th</sup> March, 2007 in a new post. If the scheme in which they were  
employed has been abolished, by no stretch of imagination can the court  
G direct payment of back-wages for the period after abolition of the scheme  
w.e.f. 1<sup>st</sup> April, 2001. Fourth, the principle of ‘no work, no pay’ would  
disentitle the respondents from the relief of back-wages. Fifth, the  
decision in *Smt. Ram Laxmi Mishra* (supra), is distinguishable on facts  
and, in any case, a relief wrongly granted to the petitioner therein cannot  
H be the basis to grant similar relief to the respondents herein, which is not

in conformity with the extant regulations or policy, the dismissal of Special Leave Petition of the State by this Court in that case notwithstanding. Lastly, the principle underlying the decision of this Court in *State of Bihar and Ors. Vs. Arun Kumar* (supra), would apply *proprio vigore* to the case of the respondents. A

20. Counsel for the respondents was at pains to point out that in all other cases of similarly placed persons, relief of back-wages for the relevant period has been granted by the High Court, which has been upheld right up to this Court by dismissal of Special Leave Petition(s) filed by the State Government and for that reason, unequal treatment ought not to be meted out to similarly placed persons. To buttress this submission, reliance was placed on the decision of this Court in *Ashwani Kumar and Ors. Vs. State of Bihar and Others*,<sup>9</sup> in particular, the dictum in paragraph 18 thereof. The said paragraph reads thus: B C

“18. Now is the time for us to take stock of the situation in the light of our answers to the aforesaid three points. As a logical corollary to these answers the appeals are liable to be dismissed as the decision of the High Court is found to be well sustained. The submission made by the learned counsel for the appellants to sustain services of these appellants on humanitarian grounds cannot be countenanced. When 6000 appointees are found to have been illegally loaded on the State Exchequer by Dr Mallick and when there were only 2250 sanctioned posts, in the absence of clear data as to who were the senior most and which were the sanctioned posts available at the relevant time against which they could be fitted, it would be impossible to undertake even a jettisoning operation to offload the removable load of excess employees amounting to 3750 by resorting to any judicial surgery. Once the source of their recruitment is found to be tainted all of them have to go by the board. **Nor can we say that benefit can be made available only to 1363 appellants before us as the other employees similarly circumscribed and who might not have approached the High Court or this Court earlier and who may be waiting in the wings would also be entitled to claim similar relief against the State which has to give equal treatment to all of them otherwise it would be held guilty of discriminatory treatment which could not be countenanced** D E F G

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<sup>9</sup>1997 (2) SCC 1

A **under Articles 14 and 16(1) of the Constitution of India.**  
Everything, therefore, must start on a clean slate. Reliance placed  
by the learned counsel for the appellants on the doctrine of  
tempering justice with mercy also cannot be pressed in service on  
the peculiar facts of these cases as mercy also has to be based on  
justice. The decision of this Court in the case of *H.C.*  
B *Puttaswamy*<sup>10</sup> also can be of no assistance to the appellants on  
the facts of the present cases as in that case the Chief Justice of  
the High Court had full financial powers to create any number of  
vacancies on the establishment of the High Court as required and  
to fill them up. There was no ceiling on his such powers.  
C Therefore, the initial entry of the appointees could not be said to  
be unauthorised or vitiated or tainted. The fault that was found  
was the manner in which after recruitment they were passed on  
to the establishments of subordinate courts. That exercise remained  
vitiating. But as the original entries in High Court service were not  
D unauthorised these candidates/employees were permitted to be  
regularised. Such is not the present case. The initial entry of the  
employees is itself unauthorised being not against sanctioned  
vacancies nor was Dr Mallick entrusted with the power of creating  
vacancies or posts for the schemes under the Tuberculosis  
Eradication Programme. Consequently the termination of the  
services of all these appellants cannot be found fault with. Nor  
any relief as claimed by them of reinstatement with continued  
service can be made available to them.”

(emphasis supplied)

F 21. For the reasons already recorded, the argument under  
consideration does not commend to us. As mentioned earlier, the factual  
position stated in the decisions in which relief has been given to the  
petitioners in the concerned petitions is distinguishable. More importantly,  
in those petitions, order of termination was the subject matter of the  
challenge and, having set aside the impugned termination, the court  
G granted consequential relief of reinstatement with back-wages to the  
concerned petitioner(s). The respondents herein, however, for reasons  
best known to them, did not challenge the order of termination which  
event had occurred w.e.f. 1<sup>st</sup> April, 2001 consequent to abolition of the  
scheme in which they were employed. Taking an overall view of the

H <sup>10</sup>1991 Supp. (2) SCC 421

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[A. M. KHANWILKAR, J.]

matter, therefore, the respondents are not entitled to the reliefs as claimed, A  
having acted upon the terms and conditions upon which they came to be  
engaged vide appointment letter dated 16<sup>th</sup> March, 2007.

22. Accordingly, this appeal must succeed. The impugned judgment  
and order passed by the High Court on 15<sup>th</sup> January, 2018 in LPA No.2307  
of 2016 is quashed and set aside. The writ petition filed by the B  
respondents, being Civil Writ Jurisdiction Case No.22208 of 2013, stands  
dismissed. The appeal is allowed with no order as to costs.

Divya Pandey

Appeal allowed.