

**Dr. Kishore Kumar and ors. Vs. State of Bihar and ors.**

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**Court :** Patna

**Decided On :** Oct-16-2001

**Judge :** Aftab Alam, J.

**Appeal No. :** C.W.J.C. Nos. 9839, 9972, 10305, 10343, 10344 and 10439 of 2001

**Appellant :** Dr. Kishore Kumar and ors.

**Respondent :** State of Bihar and ors.

**Judgement :**

**Aftab Alam, J.**

1. These writ petitions arise from a common controversy and the twenty-nine petitioners in all the six petitions who are holding the teaching posts of Reader and Professor in different colleges under the Magadh University seek similar reliefs. All these cases were, therefore, heard together and are being disposed by this judgment.

2. The issue at the core of the controversy in all these writ petitioners is whether the lecturers whose service were absorbed in the University or the college concerned under the three statutes for regularisation of services of purely temporary lecturers are entitled to take into account the period of their service rendered before absorption (for the sake of convenience hereinafter referred to as 'the previous service') for the purpose of computing the period of qualifying service

for promotion to the posts of Reader and Professor under the merit promotion or the time-bound promotion statutes, even though the previous service might not be in accordance with law. It is indeed true that this controversy is raised, at the instance of the State, after a long time. And as a result the petitioners who had become used to the promotions allowed to them long ago and the benefits, including the monetary benefits, accruing from their promotions now feel much aggrieved by the Government decision and the consequences flowing from that decision. But, the controversy has arisen under unusual circumstances and in a somewhat uncommon way and in one sense the genesis of this controversy may be said to lie in an order passed by this Court in another, pending case (being CWJC No. 5859 of 1996) in which it is the endeavour of this Court to have a realistic budget for the B.R. Ambedkar Bihar University prepared by a one-man committee appointed by the Court.

3. But, before proceeding to examine how and in what manner this controversy has arisen, it is necessary to see what is the exact and the real nature of the controversy.

4. The State Government and the Magadh University are engaged in the preparation of the annual budget for the University as required under Sections 45 to 54 of the Bihar Universities Act, 1976. The exercise for preparation of the annual budget, which is undertaken after a gap of about a decade and a half, is apparently bringing to the fore certain issues over which the State Government and the University and its teachers seem to hold widely divergent views. One such issue relates to the date from which those lecturers can be said to have entered into service of the University or the college concerned whose services were absorbed under any one of the three statutes for regularisation of services of purely temporary lecturers. According to the State Government, in case of those teachers who at the time of their absorption were not holding the post of temporary lecturer in accordance with law, the date of entry into service cannot be from a date prior to the date specified in the statutes for regularisation of service under which their services were absorbed in the University or the college concerned. And the benefit of the previous service can be allowed only to those who on the date of their absorption were holding the post of temporary lecturer lawfully and validly.

5. In preparation of the budget, the Government, in accordance with its stand, has discounted the previous service of the petitioners and has assigned to them the date specified in the statutes for regularisation of service. As a result the date of the petitioners' entry into service is considerably advanced from the date of their initial appointment, which till now was recognised by the University as the date of their entry into service. The advancing of the date of entry into service assumes greater importance when it leads to the question of promotion of the petitioners as Readers and Professors under the time-bound promotion statutes. The dates of promotion also get proportionately advanced.

6. For illustration, let us take the case of Dr. Kishore Kumar, petitioner No. 1 in CWJC No. 9839 of 2001. Dr. Kishore Kumar was appointed for a period of six months as a temporary lecturer in Mathematics in Kisan College, Son Sarai by appointment letter, dated 17-9-1977. He joined the post on 20-9-1977 and continued even after the expiry of six months till by a notification issued by the Registrar, Magadh University under his memo No. 1791/GP, dated 28-8-1982 he was absorbed in service, with effect from 20-9-1977 (the date of his joining as lecturer) under the statutes for regularisation of services of purely temporary lecturers approved by the Chancellor on 18-11 -1980. He was granted promotion as Reader under the time-bound promotion scheme with effect from 20-9-1987. However, in the University budget approved by the State Government, his date of absorption is shown as 1 -1 -1981, that is, the date specified in the statutes, dated 18-11 -1980. Taking his date of absorption/entry into service as 1-1-1981 he can be promoted as Reader not before 1-1-1991 and, thus, his promotion to the posts of Reader and Professor would be delayed by about five years on the basis of his date of entry as fixed by the Government in the budget approved for the University.

7. As a consequence of the impugned action of the Government, the pay of the petitioners will be fixed either at a lower stage or even worse in a lower pay scale; some of the petitioners who till now are recognised by the University as Professors may find themselves in the lower pay scale for the post of Reader.

8. The petitioners are naturally very aggrieved by the action of the Government. They maintain that following their absorption under the statutes for regularisation of service they must be deemed to have entered the service from the date of their initial appointment without questioning the validity of their initial appointment and regardless of whether or not on the date of their absorption they were working as lecturers legally and validly; that they were given promotions as Readers and Professors rightly taking into account their previous service and in any event the Government has no business to interfere with the dates of their entry into service and the dates of their promotions after such a long time.

9. Having thus indicated the nature of the controversy, it will be appropriate to briefly examine how this controversy came to arise as that will help in putting the entire matter in its proper perspective. In order to trace out the genesis of the present controversy one would have to go back and refer to four earlier decisions and orders of this Court which may be enumerated as:

(i) This Court's decision in Patna University Teachers Association v. State of Bihar 1995 (1) P.L.J.R 197,

(ii) the order passed by this Court in B.R. Ambedkar Bihar University Teachers Association v. State of Bihar 1997 (2) P.L.J.R. 318 (for the sake of convenience referred to as the 'first order')

(iii) the 2nd order passed by this Court in the case of B.R. Ambedkar Bihar University Teachers Association v. State of Bihar, 1998(2)P.L.J.R. 103 and (for the sake of convenience referred to as the 'second order')

(iv) the 3rd order passed in the case of B.R. Ambedkar Bihar University Teachers Association 2000 (2) P.L.J.R. 867 (for the sake of convenience referred to as the 'third order')

10. To give a brief out line of the decisions/orders leading up to the present controversy it may be said that in the case of Patna University Teachers Association, as bench of this Court (of which I happened to be a member) noticed, for the first time, that in complete disregard of the provisions of the Act, the annual

budget for the University was not prepared for the past several years and in that case, this Court gave direction, both to the University authorities and the State Government inter alia to prepare the annual budget of the University within a specified time.

11. In the case of B.R. Ambedkar Bihar University Teachers' Association, this Court found to its dismay that the case of the other Universities was no better and like Patna University the annual budgets of other Universities in this State had also not been prepared for more than a decade and a half. In the first order passed in that case, this Court also noticed that even after a peremptory order passed more than a year ago and despite contempt proceedings being instituted, no progress was made in the preparation of the annual budget for the Patna University and then this Court came to realise that on many issues the University authorities and the State Government were so deeply in dispute that it was no longer possible for the Government and the University authorities to sit down together and to agree upon a realistic and mutually acceptable budget for the University. This Court then decided to make a more active intervention in the matter and constituted a one-man committee of Mr. Justice S. Sarwar AN, formerly Acting Chief Justice of this Court to prepare the annual budget of the B.R. Ambedkar Bihar University in consultation with the authorities of the University and the State Government.

12. This Court's notion about the University and the Government being in serious dispute over several issues basic to the preparation of the budget was soon vindicated when Mr. Justices. Sarwar Ali submitted two interim reports stating that there were certain disputed issues between the University and the Government and unless those issues were resolved by the Court, it may not be possible to prepare a realistic budget.

13. On the issues indicated in the two interim reports, this Court heard Counsel for the parties and passed the second order in the case of Bihar University Teachers' Association. One of the issues which came up for consideration in the second order was framed as:

The relevant date for computing the period of qualifying service for promotion under the three promotion statutes.

On that issue this Court turned down the stand of the State Government that qualifying service for promotion to the posts of Reader or University Professor could be taken into account only from the date when the lecturer concerned became 'University servant', i.e., came in the employment of the University. In other words, from the date when the affiliated college in which he was serving became a constituent unit of the University or his service was regularised in a constituent college. This Court held, accepting the stand of the teachers' association, that the previous service in an affiliated college was also to be taken into account as part of the qualifying period of service for promotion as Reader or Professor under the merit promotion or the bime-bound promotion statutes.

14. After some time the committee submitted a third interim report identifying few more issues and requesting for guidelines from the Court for preparation of a realistic budget. It was in the third interim report, dated 2-9-1999 that the question was raised for the first time as to whether the previous service of a lecturer, though not in accordance with law was to be taken into consideration for computing the qualifying service for promotion as Reader and Professor. In the bulky report, (which lies on the record of C.W.J.C. No. 5899 of 1996: B.R.A. Bihar University Teachers' Association v. State of Bihar) the Committee dealt with this issue at length from constitutional, legal and administrative angles and cited in great detail the gross irregularities committed in the matter of absorption and promotion of lecturers. The Committee also pointed out that those irregularities had put an enormous and wholly unjustified financial burden upon the State Government. The Committee, therefore, proposed that in preparation of budget, the previous service of lecturers absorbed in service under Regularisation statutes, if not in accordance with law, should be discounted for computing the period of qualifying service for promotion as Reader or Professor under the bime-bound promotion statutes.

15. The third interim report of the Committee came up for consideration before this Court and after hearing Counsel for the parties, the order dated 21-2-2000 was passed, reported as the third order in Bihar University Teachers Association case. In this order, this Court upheld the views expressed by the Committee and supported by the State Government. In paras 43 and 44 of that order, it was held and directed as follows:

43. The Secretary, Human Resources Development Department strongly argued that though the question of absorption of a temporary lecturer might be determined on the basis of the provision contained in the three absorption statutes, for the purpose of giving him the benefit of past service, it must be seen whether the service prior to the absorption was legal and valid. It was contended that three statutes were not intended to allow the benefit of past service to the lecturers being absorbed in service and the Court may not allow them the benefit of past service at least in cases where the period of 'service' prior to the date of issuance of the statutes is found to be patently illegal and invalid, being in violation of the relevant provisions of the Act and the Statutes. The Secretary further submitted that in this regard, a distinction must be made and the benefit of past service may be allowed only to such temporary teachers who at the time of their absorption in service were holding the post legally, validly and in terms of relevant provisions of the Act and the Statutes. But, the benefit of past service must not be allowed to those who at the time of their absorption in service could not be said to be holding the post of lecturer in any lawful manner. The Secretary further submitted that though for the purpose of absorption the necessary qualifications were spelled out in the three absorption Statutes, the legality and validity of their past service could only be tested with reference to the provisions of Sections 57, 57A and 58 of the Bihar State Universities Act and Section 11(sic-2(11)) of the Bihar College Service Commission Act, 1976 and in case the teacher concerned at the time of his absorption under any of the three absorption Statutes was found to be present in the college not in terms of the provisions of the aforesaid two Acts, his service' prior to his absorption could only be held to be illegal and invalid and in such cases, the teacher concerned could not be allowed the benefit of past service for computing the period of qualifying service for promotion under the bime-bound promotion scheme. The Secretary further explained that the true object and purpose of letter, dated 16-7-1982 issued by the Education Commissioner-cum-Secretary, Government of Bihar was to meet the inequities arising due to the delay made by the different authorities under the three absorption statutes and the direction given in the aforesaid letter was intending to cover only such temporary lecturers who at the time of their absorption were in service in a lawful manner. The object and purpose of the letter was never to extend the benefit of past

service also to persons who at the time of their absorption were not holding the post of temporary lecturer in a legal or valid manner.

44. I find substance in the submissions made on behalf of the State and the case made out by the Committee in Annexures-III to V of its third interim report.

16. While passing that order this Court was quite conscious that all the individual teachers who might be affected by the guide lines laid down for preparation of the budget were not before it. In order to protect the rights and interests of the individual teachers, the Court made a number of observations and directions from paras 46 to 48A of which the contents of para 48A being most relevant are reproduced below:

48A. However, in all such cases where, in the preparation of budget, the dates of promotion to the next higher post gets altered on account of denial of the benefit of past service, the University shall make a report without any delay to the authority concerned, making a request to redetermine the correct and lawful date of promotion of the affected teacher in the light of the relevant provisions of the Acts and the Statutes. It will also be open to the affected teacher to approach the authority (ies) concerned directly and make a request for redetermination of the date (s) of his promotion (s). On such a report/request being made the authority (ies) concerned will reconsider the matter in the light of the Committee's report and the State's objections and take a fresh decision within three months from the date of receipt of the report/request submitted by the University. Any party, be it the individual concerned or the State, in case aggrieved by the fresh determination of the correct dated (s) of promotion (s) will be entitled to take recourse to legal remedies. The date (s) so determined will be reflected in the future budgets of the University.

17. From the above, it would be evident that what was held and observed by this Court in connection with the preparation of the annual budget for the B.R. Ambedkar Bihar University has been applied by the State Government in the preparation of the budget of the Magadh University and the State Government fully relies upon the directions given in the third order, as quoted above, in support of its stand. The petitioners, on the other hand, feel aggrieved by the third order

passed in the Bihar University Teachers' Association case and assail it on different grounds. However, before proceeding to examine the rival contentions, it would be appropriate to take note of certain facts and to clarify certain allied issues.

18. It may be noted here that in course of hearing of these writ petition which was spread over a number of days, this Court repeatedly observed that as indicated in para 48-A of the third order the petitioners may consider to first take the dispute regarding the effective dates of their promotions as Reader and P. professor before the Bihar State University (Constituent Colleges) Service Commission which was the competent authority under the promotion statutes. The Court made repeated observations that in case the petitioners opted for this course, the Court may consider giving appropriate directions to all concerned, including the Commission. And after the matter was first examined and decided by the Commission, the aggrieved party could still avail of remedies as may be provided in law. But both Mr. Rajendra Prasad Singh and Mr. Narendra Prasad, learned Senior Counsel appearing for the petitioners in some of the cases of this batch, on instructions from their respective clients, asked the Court to adjudicate upon the controversy, instead of first going to the Commission. This Court then proceeded to decide the issue, in accordance with law.

19. Another fact that is required to be noticed is that in a recent decision in Dr. Shiv Narain Yadav v. State of Bihar 2001 (2) P.L.J.R. 817 a bench of this Court has held and found that the statutes for regularisation of service were ultra vires the Bihar State University Act and were bad and illegal. Having thus found, the decision went on to direct that regularisation of services would not be reviewed or recalled but those statutes or any other statute of that nature will not be used for any more regularisation of services'. Later on in this judgment, we shall have occasion to examine this decision in some more detail as surprisingly petitioners have deemed fit to place reliance on this decision also.

20. Another issue that requires to be clarified in the context of the present controversy is that according to the State Government its action in fixing the dates of the petitioner's entry into service is not to be construed as an order of demotion of the petitioners from the posts of professor or Reader. Under the Bihar

Universities Act, the State Government does not come into picture in the matter of grant of promotion to teachers. In context, all that the Government action does is to draw the limit of its financial liabilities towards the University insofar as the petitioners are concerned. In terms of Sections 46, 48 and other allied provisions of the Bihar State Universities Act, the State Government has financial obligations towards the Universities in this State and it is in the discharge of those obligations that the annual budget is prepared and the Government makes payment to the University on the basis of its budget. It is in that context that the Government has drawn a line limiting its financial liability towards the petitioners. According to the State Government the posts held by the petitioners is a matter between the University and the petitioners but so far as the payment of salary is concerned, the liability of the State Government must be determined on the basis of their dates of entry into service as fixed by it, in the light of the third order passed in the case of Bihar University Teachers' Association. The Government insists that its action is not to be construed as direction for demotion of the petitioners. That, however, would be of very little consolation for those affected because though they may be given the title of professor, by the action of the State Government they would be only getting the pay scale admissible to the post of Reader.

21. One last issue that requires clarification at this stage is that the action of the Government is based on the premise that the petitioners on the date of their absorption were not holding the posts of temporary lecturer lawfully and validly. In this regard, it may be noted that hardly any effort was made on behalf of the petitioners to show that on the date of their absorption, they or any of them were holding the post of lecturer lawfully and validly. The whole argument on behalf of the petitioners proceeded on the basis that regardless of the previous service being lawful or otherwise, it must be taken into account once the teacher concerned was absorbed under any one of the statutes for regularisation for service.

22. This Court in this judgment, therefore, proceeds to decide the issue as a legal principle without going into the case of the individual teachers and it is left open to the individual teachers to satisfy the authorities concerned, if they may be in

position to do so, that on the dates of their respective absorptions they were holding the post of temporary lecturers legally and validly. If the petitioners or any of them are able to establish this, the respondent authorities would certainly review and reconsider the decision in respect of that petitioner in accordance with law.

23. Now that the decks are made clear, we may proceed to examine the rival contentions raised on behalf of the other parties. On behalf of petitioners, the directions in the third order in the case of Bihar University Teachers' Association were sought to be assailed in all possible ways. That is understandable because the impugned action by the Government is directly based on the directions given in the third order. But some of the grounds advanced for assailing that order were rather curious.

24. Mr. Rajendra Prasad Singh, learned Senior Counsel was somewhat restrained in his submissions. Mr. Singh suggested that the third order was in deviation from the view taken and directions given in the second order. But Mr. Narendra Prasad was more forthright. Mr. Prasad submitted that the third order was passed differently and in disregard of the second order which, according to him, constituted a binding precedent though having been passed by the same Judge. Mr. Prasad submitted that in case the Judge later on intended to take a different view the proper course for him was to refer the matter before a Division Bench. He in fact submitted that even this batch of cases may be directed to be listed before a Division Bench. In support of his submission regarding judicial proceedings being bound by precedents Mr. Prasad relied upon Supreme Court decisions in (i) *State of Tripura v. Tripura Bar Association and Ors.* : AIR 1999 SC1494 , (ii) *Sri Venkateswara Rice, Ginning and Groundnut Oil Mill Contractors Co. etc, v. State of Andhra Pradesh and Ors.* : [1972]1SCR346 Para 9 and (iii) *Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel* : [1968]1SCR455 .

25. Now I find it difficult to follow, much less appreciate, the criticism that the third order was in breach of the binding precedent of the second order. Any question of not following a previous decision or taking a view contrary to an earlier judgment would arise only in case the two decisions or orders were passed on the same issues. From a mere reading of the second and the third orders, it is evident that

the issues under consideration in those two orders were quite different and any criticism that the third order was in deviation from or in disregard of the second order is quite mis-conceived and appears to be the result of a superficial similarity in the two issues. The issue that was framed in the second order is quoted earlier in this judgment. That issue came to arise on the basis of the objection raised by the Government that the period of service before absorption rendered in an affiliated college should not be taken into account for computing the qualifying period of service for promotion. In the reported judgment just below, the issue is framed in bold letters the objection raised by the State Government is taken note of in the following words:

It is the case of the State that by wrongly taking into consideration the period of service rendered in an affiliated college even prior to the date on which the service of the lecturer concerned got regularised under the absorption statutes, the University authorities gave a large number of promotions much in advance from their due dates.

Further,

According to the case of the State qualifying service for promotion to the posts of Reader or University Professor could be taken into account only from the date when the lecturer concerned became University servant, that is, came into employment of the University. In other words, from the date when the affiliated college in which he was serving became a constituent unit of the University or his service was regularised in a constituent college,

26. The objection raised by the State Government was negatived in the second order and all observations and remarks made in that order are to be viewed in the context of the objection being under consideration. Apart from the issue being entirely different in the second order, it is to be noted that even the question of the previous service rendered in an affiliated college was being considered on the premise that the previous service was legal and valid. The second order not advert even remotely to the issue of invalid or illegal service.'

27. Later on, in the preparation of the budget, it came to the notice of the Committee that benefit of previous service, though wholly unlawful, was accorded in a large number of cases in granting promotions as Reader or Professor and it was in that view that the Committee submitted its third report bringing to the notice of the Court amongst others this aspect of the matter. The third interim report of the Committee led to the passing of the third order in which the issue was whether or not the previous service, though illegal and unlawful, may also be taken into account for grant of promotions as Reader and Professor. On this issue, the Court did not accept the submissions advanced on behalf of the Teachers' Association and accepted the stand of the State Government and the proposals of the Committee. It is, thus, to be seen that the issues under consideration in the second order and the third order were entirely different and the criticism against the third order that it did not follow the binding precedent of the second order is wholly mis-conceived and untenable.

28. On the issue of precedents, it was further submitted both by Mr. Rajendra pd. Singh and Mr. Narendra Prasad that the third order was passed in breach of the binding decision of the Supreme Court in Patna University v. Awadh Kishore Prasad Yadav 1994 (1) BUR 790 : (SC) 1994 B.B.C.J. 293 (S.C.) in which inter alia, the following direction was given:

(viii) When the promotions are given under the aforesaid Time-Bound Promotion Scheme, the dates of promotion shall be the same as had been given to respondents concerned earlier. Those respondents who have been reverted because of the order of the Vice Chancellor concerned, if promoted again, shall also be entitled to the salaries and other emoluments with effect from their earlier dates of promotions.

29. According to the Counsel, the third order was also contrary to the decision of a division bench of this Court in Dr. Shiv Narain Yadav v. State of Bihar and Ors. 2001 (2) P.L.J.R. 817 in which though the statutes for regularisation of services of purely temporary lecturers were held to be bad and illegal, the regularisations made earlier on the basis of those statutes were directed not to be reviewed or recalled.

30. Before proceeding to examine whether or not the two decisions can be said to make binding precedents for the issue under consideration in the third order, it would be well to recall that a decision serves a precedent only in respect of what is decided therein and not what may logically follow from that decision. Keeping this in mind, let us examine the Supreme Court decision in *Awadh Kishore Pd. Yadav*. That case had arisen when the Universities in this State had cancelled promotions given to their teachers under the time-bound promotion schemes because the Bihar State University (Constituent Colleges) Service Commission had withdrawn recommendations earlier granted by it saying as follows:

If the Screening Committee has not been constituted as per the provisions of the statutes and in the Screening Committee in place of regular expert some other person has participated as expert, then the Commission addressed them as irregular, accordingly their recommendation for promotion is de-recommended.

On writ petitions filed on behalf of the teachers, this Court held that the Commission had no power to review and recall its recommendations made earlier and on that basis allowed the writ petitions. The University went in appeal in which the Supreme Court gave directions for fresh screening of the teachers by a properly constituted committee and then to the Commission to give its recommendations on the basis of the report of the properly constituted Screening Committee. It was in that context that the direction was given that in case the promotions were re-affirmed the dates of promotion shall be the same as had been given to the teachers concerned earlier. There was no issue before the Supreme Court whether the previous service, though unlawful, illegal and invalid must also be taken into consideration for computing the period of qualifying service for promotion.

31. In *Dr. Shiv Narain Yadav*, a division bench of this Court considered the very validity of the Statutes for regularisation of services of purely temporary lecturers and came to find and hold that those statutes were illegal and ultra vires the Act. The decision, however, went on to direct that regularisations made earlier would not be reviewed or recalled but hence-forth no further regularisation will be made

under those statutes or any other similar statutes. Thus, what the Court said was simply that absorptions made long ago should not be undone on the ground that the statutes under which those absorptions were made were later held to be bad and illegal. In this decision also, the issue was not what was under consideration in the third order or in this batch of writ petitions. I am, therefore, fully satisfied that the criticism of not following any binding precedent does not remotely attach to the third order passed in the case of the Bihar University Teachers' Association.

32. Mr. Narendra Prasad next submitted that all objections in the matter of promotions granted to the teachers should have been raised on behalf of the State at one time, that is to say, at the stage of passing the second order in the Bihar University Teachers' Association' case. And the objection about the previous service of the teachers not having been raised at that stage, the State Government was barred from raising that objection at any subsequent stage on principles of resjudicata and constructive resjudicata.

33. I am unable to accept the submission for a moment and I see no application of res judicata or constructive res judicata in this case. It is seen earlier in this Judgment how this matter has developed from stage to stage. A committee appointed by this Court undertook the preparation of the budget for the University after a gap of about a decade and a half. In course of preparation of the budget, it faced problems and discovered disputed issues which were required to be resolved before a meaningful budget could be made. The Committee, therefore, made references of the unresolved and disputed issues seeking the Court's directions and guidelines for preparing the budget. The budget making exercise by the Committee was not a judicial proceeding before a Court of law and there is no question of any application of principles like res judicata or constructive res-judicata to the proceedings before the Committee. The Committee referred the disputed issues to the Court as and when it was confronted with those issues and this Coy rt gave its directions and guidelines to the Committee for the preparation of the budget. In these facts and circumstances, there is no question of any application of the principles of constructive res judicata.

34. Mr. Rajendra Pd. Singh next submitted that the State Government has no authority or power under the Bihar State Universities Act, 1976 or the statutes framed thereunder to discount a period of service and consequently to advance the dates of promotions of the petitioners. Elaborating the point, Mr. Singh submitted that the promotions were granted on the recommendation of the Bihar State University (Constituent Colleges) Service Commission, and it was not open to the State Government to advance the effective dates of promotion of the petitioners. The answer to this submission is to be found in the earlier part of this judgment where the stand of the State Government is noted. It is stated above that according to the State Government, the respective posts that the petitioners might be holding may be a matter between the University and the petitioners but insofar as its financial liability is concerned, the State Government would only recognise the dates as fixed by it as the petitioners' dates of entry into service and it will accept its financial liability on that basis.

35. Mr. Rajendra Pd. Singh also submitted that the State Government had acted in violation of the principles of natural justice and the determination of dates of entry into service was made without giving the affected teachers any notice or any opportunity to show cause. I am unable to accept this submission either. While fixing the dates of the petitioners' entry into service, the Government has also given a direction to the University to ask the teachers concerned to show cause and to forward the teachers' reply, if any, with the University's comments to the authorities concerned for decision. It, therefore, cannot be said that the petitioners were not given an opportunity to show cause. Moreover, in course of hearing of these cases, this Court repeatedly observed that as indicated in para 48-A of the third order, the petitioners may first take their case before the Commission for determination of their effective dates of promotions but this option was not accepted by the petitioners who insisted for a determination of the issue by this Court itself whereupon the parties were heard at length and then only did this Court proceed to decide the issue. The petitioners, therefore, cannot make the grievance regarding any breach of the principles of natural justice.

36. Mr. Narendra Prasad submitted that the absorption of each of the petitioner in the service of the University or the college concerned was from a specified date

and that date could not be changed or advanced specially after such a long time. Mr. Prasad pointed out that absorption from retrospective dates (i.e., extending the benefit of past service) was subject to the only condition that the absorbed lecturers would not get any payment for their past service. But the absorption being from a specified date (being the date of initial appointment) that date must form the basis of all future actions, including promotions as Reader and Professor and preparation of budget, etc. In this regard, learned Counsel further submitted that by advancing their dates of entry into service, the petitioners were sought to be divested of rights already vested in them and settled with the long lapse of time.

37. Purely as a matter of fact, Mr. Prasad is quite right that in the notifications issued by the University absorbing the services of purely temporary lecturers, a date was also given from which the services of the lecturers concerned were being absorbed in the University and in each case, the date given was the date of initial appointment of the lecturer concerned. This, to my mind, is at the root of this controversy. Though it is true that in the absorption notifications issued by the University, each lecturer was given the date of his initial appointment as the date of absorption in service, the question remains whether there was any sanction in law for assigning that date. The University unfortunately has been only too eager to extend all possible benefits to its lecturers but what the University did in fact will not be conclusive unless it can be shown that there was a sanction in law for such action.

38. The manner in which the University seems to go out of its way to extend a helping hand to its teachers was quite unpleasantly witnessed even in course of hearing of this case.

39. On 5-10-2001, Mr. M.M.P. Sinha, learned Counsel appearing for the University started making his submissions. He strongly defended the action of the State Government and resisted the reliefs prayed for on behalf of the petitioners. He questioned the very maintainability of the writ petitions pointing out that at this stage, the State Government had only fixed the dates of entry into service of the petitioners and had asked the University to obtain from the teachers concerned their show cause and to forward it to the competent authority with its

recommendations. Learned Counsel submitted that the writ petitions were premature inasmuch as at this stage the petitioners were not going to be materially affected. Proceeding then to make his submissions on the merits of the controversy he took his stand, which on certain issues went even beyond the stand taken by the State Counsel. As regards the date of entry into service, he submitted that logically and lawfully the date of entry into service could only be the date on which the absorption notification was issued and according to him, the State Government had taken a lenient view in fixing the date of entry on the basis of the cut-off dates in the statutes under any one of which the petitioners were absorbed. He was yet to complete his arguments when the matter was adjourned at the end of the Court hours.

40. When the hearing of the case resumed on 8-10-2001, Mr. Sinha reported to the Court that over the weekend, he had received numerous telephone calls from the office of the Vice Chancellor asking him to recall all submissions made by him on the previous day and to support the case of the petitioners, Personally, Mr. Sinha was visibly distressed but he could only act as instructed by his client, the University. In those circumstances, he closed the arguments and sat down without proceeding any further with his submissions.

41. Further, without commenting upon the merits of the case of the individual petitioners, this Court would wish to divert for a moment and to put on record some of the strange cases that have come to its notice only recently.

42. In one case a 'lecturer' was appointed on part-time basis on a monthly stipened of Rs. 100 till the summer vacation in that year. Seven years later she was regularly appointed on the basis of the recommendations by the University Selection Committee. But for computing the qualifying period for her promotion as Reader, she was also given the benefit of the previous seven years of service as part-time lecturer on monthly stipened of Rs. 100. (See CWJC No. 8549 of 2001).

43. In another case, an appointment was made as lecturer against a post which was not sanctioned and even before the candidate had passed the master's examination. Even after the college became constituent, he could not be paid any salary as the post was not sanctioned. That person was not alone in this

predicament and it appears that there were a large number of such persons working in colleges made constituent but against posts which were not sanctioned. The University then found the way to transfer such lecturers to other colleges where sanctioned posts were vacant. So, an arrangement was made for payment of salary to those teachers. They were similarly granted the benefit of previous service for promotion as Readers and Professors (CWJC No. 8594 of 1991, date of disposal 10-8-2001).

44. Such illustrations can be multiplied.

45. These illustrations were given only to emphasise that the action of the University in assigning the date of initial appointment as the date of entry into service cannot be conclusive unless a legal sanction for such action can be found and shown to the Court.

46. Now in the regularisation statutes, there is no sanction for such a course of action. The statutes take into account the previous service for two purpose Only, expressly stated in the statutes, namely, for grant of annual increments and for protection of inter se seniority.

47. Mr. Rajendra Pd. Singh submitted that in the Government letters No. 1044, dated 7-8-1989 and No. 906, dated 16-7-1982, there was sufficient basis to hold that absorption would also bring to the teacher concerned the benefit of the previous service. Regretfully, I am unable to accept the submission. Both the Government letters dated 7-8-1989 and, dated 16-7-1982 have been discussed and considered in the second and the third orders passed in the case of the Bihar University Teachers' Association. The letter dated 7-8-1989 is on the subject of grant of the revised U.G.C. scales to teachers promoted as Reader or Professor under the time-bound promotion statutes. So far as the letter dated 16-7-1982 is concerned, it has been explained that the object of that letter was to protect the inter se seniority of teachers absorbed under two different statues in terms of which absorption was to be made on the recommendations of two different authorities.

48. Mr. Narendra Prasad, learned Counsel submitted that the benefit of past service would come automatically and as a consequence of absorption. Learned Counsel submitted that the very purpose and object of absorption was to regularise the previous service and to give to the employee concerned the benefit of the previous service. In support of his submission, Mr. Prasad relied upon a Supreme Court decision in *The Direct Recruit Class-II Engineering Officers' Association and v. State of Maharashtra and Ors.* : [1990]2SCR900 .

49. I find it difficult to accept such a sweeping generalisation. I am not aware of any general law of absorption or regularisation in which a proposition may legally hold that all absorptions must by implication give the benefit of previous service to the employee concerned. Absorption or regularisation when made under statutory Rules or statutes must conform to the statutory provisions and would extend to the employee concerned only such benefits as may be envisaged under the relevant statutory Rules.

50. As noted, in the statutes of regularisation, there was no indication that absorption was to bring to the employee concerned the additional benefit of his previous service being computed for the purpose of future promotions as Reader and Professor. The decision in the case of *The Direct Recruit Class-II Engineering Officers' Association (supra)* also does not help the case of the petitioners at all. The decision in that case was on a dispute of seniority between the direct recruits and the promotees and in that context, it was said that the benefit of the past service though ad hoc cannot be denied for the purpose of seniority. The decision in *Direct Recruit Class II Engineering Officers Association*, as explained in the later decision in *State of West Bengal and Ors. v. Aghore Nath Dey and Ors.* (1993) 3 SCC 317 does not help the petitioners in claiming the benefit of previous-service, even though illegal for the purpose of future promotions, following their absorption in the University.

51. Mr. Narendra Prasad lastly submitted that the State Government was barred by estoppel from raising this objection at his stage. I am unable to appreciate this submission and I do not see any application of the principle of estoppel. The absorption notifications were issued by the University on the recommendations

made by authorities other than the State Government. The grant of promotion was also made by the University on the recommendation of the Bihar State University (Constituent Colleges) Services Commission and the State Government had no role to play either in the absorption or promotions of the petitioners. It is noted above that all this while the annual budgets were not prepared and the University employees were being paid their salary from the ad hoc grants given by the State and it is for the first time that in course of preparation of the budget, the State Government has taken cognizance of the dates of entry into service of the petitioners, for accepting its financial liability towards them.; I, therefore, fail to see what action or promise of the Government can be said to act as estoppel against it from raising this issue.

52. At this stage, I may briefly take note of the submissions made by learned S.C. VII appearing for the State. The State Counsel submitted that a regular, valid and legal appointment on the post of Lecturer could only be made in accordance with Sections 57, 57-A and 58 of the Bihar State Universities Act. The provisions contained in these Sections have undergone more frequent amendments than most other provisions of law and it is not needed to go into the details of these provisions or to trace out the legislative changes made therein because whether the petitioners were lawfully holding the posts of lecturer on the dates of their absorption has not been raised as an issue in this case. It is, therefore, sufficient to note what according to the State Counsel can be broadly described as the legal provisions for appointment to the post of lecturer. Mr. Hasan Counsel for the State submitted that at no point of time, any regular or lawful appointment to the post of lecturer could be made in the absence of a recommendation by the selection body which was different for affiliated colleges and constituent colleges. The selection bodies on whose recommendation appointment could be made kept on changing by amendments in the Act from on changing by amendments in the Act from time to time but a recommendation by a competent selection body on the basis of a process of selection was always a sine qua non of a valid appointment to the post of lecturer. The Act allows of only one exception wherein administrative exigencies a temporary appointment of lecturer could be made by the Syndicate/Vice Chancellor for a period not exceeding six months. But in the case of such exceptional appointment, the Act took care to mandate that the appointment shall

be deemed to have been terminated on the expiry of a period of six months. By subsequent amendments in the Act, the language of the prohibition against the temporary appointment continuing beyond six months was made more and more stringent.

53. Mr. Hasan submitted that almost all the petitioners were appointed as Lecturers under the exceptional provision for appointment not exceeding the period of six months and after the expiry of the period, though the petitioners might have continued physically, their services stood terminated by operation of law and on the dates of their respective absorption every petitioner was holding the post of temporary lecturer not in accordance with law but illegally and unlawfully. Mr. Hasan further submitted that in those circumstances to give them the benefit of previous service following their absorption in the University or the College concerned, as the case may be would be unjust, unfair and unreasonable.

54. Mr. Hasan argued that the only way the claim of the petitioners could be sustained was to hold that a palpably illegal benefit or advantage if extended for 20-25 years would create a lawful right in the beneficiary and it cannot, therefore, be discontinued even after the illegality came to light. Mr. Hasan further stated that the State Government had no intention of making any recovery from the petitioners of the differential salary unlawfully received by them in the past but henceforth their salary must be determined in accordance with law, I find considerable force in the submissions made on behalf of the State and I am inclined to accept the stand of the State Government subject, however, to one qualification.

55. To say that the teacher concerned will not get the benefit of previous service which was bad, invalid and illegal is one thing but to say that the teacher concerned, in case he was not lawfully holding the post of lecturer on the date of his absorption would lose the benefit of his previous service entirely is something quite different. The State Government has fixed the dates of entry into service on the basis of the second proposition but to my mind, it would be more fair just and equitable to fix the dates of entry into service on the basis of the first proposition.

56.1 would, therefore, hold and direct that in case a teacher was holding the post of lecturer validly and legally on the date of his absorption, he would be entitled to the benefit of the entire previous service. On the other hand, if a lecturer was not holding the post of lecturer lawfully and validly on the date of his absorption, he would be entitled to the benefit of previous service only to the extent his previous service was in accordance with law. The State Government and the University will accordingly reconsider and review the cases of the petitioners and extend to them, insofar as permissible, the benefit of the previous service to the extent it was held lawfully and validly.

57. Before parting with this case, I would like to observe that this Court is not unconscious that as a result of this judgment, the petitioners may be placed in a lower scale of pay and they may feel unkindly dealt with by this judgment in these hard times. But, it is often said that hard cases make bad laws and this Court has come to believe that gross irregularities in absorption/promotions (as illustrated by the two examples given in this judgment) and the financial anarchy prevailing in the Universities in this State go hand in hand. The non-payment of salary to the University employees in time, the non-settlement of their retiral dues, the non-deposit of the provident fund contributions, though deducted from the salary of the University employees and the kind of irregularities in the absorption and promotions, etc. as noticed in this case are only the two sides of the same malaise and are connected with each other on a cause and effect basis and unless such hard decisions are taken, it will be impossible to restore the financial and academic health of the Universities in this State. Any leniency which is not strictly sanctioned by law will be quite misplaced and at this stage will only lead to further deterioration in the field of higher education in this State.

58. These writ petitioners are disposed of with the aforesaid observations and directions.