

STATE OF BIHAR AND ORS.

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v.

SHYAM YADAV AND ORS. ETC. ETC.

JANUARY 14, 1997

[S.C. AGRAWAL AND G.T. NANAVATI, JJ.]

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Service Law—Retrenched census employees—Absorption in the State Government—No document indicating that State Government has decided to absorb them in Government Services nor to show that any of them was earlier a State Government employee—Hence, the High Court's direction to give preference to such employees in the matter of appointment in the State services, is held liable to be set aside—However, such employees are entitled to relaxation to age-limit and priority in forwarding of names by employment exchange.

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At the time of Census operations, Government of India appoints Class III and Class IV employees but after the completion of the said operation, services of those employees get terminated. Similar appointment and termination were made in connection with 1991 census operations.

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The Registrar General and Census Commissioner, Government of India requested the Chief Secretary of the State to absorb the retrenched census employee in its office. But the Chief Secretary showed his constraints for the reason that in different offices of the state Government itself, there was an excess number of both retrenched and surplus employees still waiting for readjustment.

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The respondents filed a writ petition for direction to the State Government to absorb them against the existing vacancies available in different departments in the State Government. The High Court allowed the writ petition on the ground that the State Government took a policy decision on January 8, 1973 to provide employment by absorbing retrenched census employees, by relying on the different letters of the State Government in which the said policy was reiterated through various executive instructions. The High Court directed the State Government to absorb them along with others at the time of regular appointment against suitable posts and that they should be given preference, if they are other-

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A wise eligible for such appointment and in case they are found over aged, age relaxation equivalent to the period they have served in the Census Department, can also be provided but such consideration shall be strictly in accordance with *inter se* seniority of the retrenched employees of that year. Hence, State preferred this appeal.

B The appellant contended that the documents on which High Court relied related to retrenched employees of 1971 and 1981 Census Operations. In regard to the retrenched employees of 1991 Census Operation, the State Government has fully considered their case and decided that it was not possible to absorb them in State Service because there was excess
C number of both retrenched and surplus employees waiting for readjustment.

Respondent on the other hand contended that they were employees of the State Government having been employed in connection with the census operations in the State and it is the obligation of the State Govern-
D ment to absorb them in the service under the State. This contention has been raised for the first time in this court.

Allowing the appeal and setting aside the judgement of the High Court, this Court

E **HELD : 1.** In view of the specific averment contained in the Writ
Petition that the Petitioners were given temporary appointment in the
census department of the Central Government, there is no basis for the
claim of the petitioners that they were the employees of the State Govern-
ment and, therefore, it is the obligation of the State Government to absorb
F them. [253-H]

2. On considering the letters on which High Court had relied, it can
be construed that those letters referred to the census operations of 1971
and 1981. But there is nothing in the said letters, which may indicate that
it contains a policy for the absorption of retrenched census employees for
G the future census operations. On the other hand, there are letters of the
State Government stating that it was not possible for the State Govern-
ment to absorb the retrenched employees of 1991 Census operation in the
State Government. So, it cannot be said the State Government had taken
any policy decision regarding absorption of retrenched Census employees
H for the future census operations. [254-B-D]

3. The petitioner may be given one time relaxation in age in case of their appointment, provided they were within the age limit prescribed for appointment at the time of their initial recruitment in the census operation. Employment Exchange is directed to restore the names of the petitioners who were earlier registered with them and those petitioners who were not yet registered would be entitled to get themselves registered with the Employment Exchange. The petitioners so registered shall be given priority/relaxation by the Employment Exchange in the matter of forwarding their names for appointment against the future vacancies. [260-H, 261-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 9227-9234 of 1995 etc.

From the Judgment and Order dated 18.2.94 of the Patna High Court in C.W.J.C. Nos. 11414, 12248, 11823, 12590, 12258/92, 324, 533 and 1311 of 1993.

B.B. Singh for the Appellants.

Vasudev Prasad, Devendra Kumar, Mrs. Mridula Ray Bhardwaj, S.K. Sinha and M.M. Kashyap for the Respondents.

The Judgment of the Court was delivered by

S.C. AGRAWAL, J. The question that falls for consideration in these appeals is whether Class III and Class IV employees who were employed in connection with census operations of 1991 in the State of Bihar and whose services have been terminated after the completion of the census work are entitled to seek absorption in service under the Government of Bihar.

The census operations are conducted by the Government of India in accordance with the provisions of The Census Act, 1948 after an interval of 10 years. In connection with the said census operations Class III and Class IV employees are employed as Supervisors, Checkers, Compilers, etc. for collecting different datas in the various Tabulation Offices established in different parts of the Country. After the completion of the census operations the services of these employees are terminated. Demands have been raised from time to time by such retrenched census employees for their absorption in service in the Central Government or in the State Government. Similar appointments were made on the posts of Supervisors,

- A Checkers, Compilers, etc. in connection with 1991 census operations and after the completion of the census operations their services were terminated. By his letter dated December 26, 1991, the Registrar General and Census Commissioner, Government of India, requested the Chief Secretaries of the States to extend whatever assistance the State Government could provide in absorbing in the State Government's own offices as well as in the undertakings the temporary staff appointed in connection with the census work when the Regional Tabulation Offices which have been set up in the States/Union Territories are wound up in 1992. The Secretary to the Government of Bihar, Department of Personnel and Administrative Reforms, by his letter dated September 2, 1992, informed
- B the Registrar General and Census Commissioner that the number of retrenched and surplus employees of the different offices of the State Government are excessive and they are waiting for being adjusted in the Government service but till now it has not been possible to give them a berth and in the circumstances it would not be possible for the State
- C Government to absorb the retrenched census employees of State Government of India in its offices. Feeling aggrieved by the said communication dated September 2, 1992, a number of retrenched employees of 1991 census operations filed Writ Petitions in the Patna High Court for quashing the letter dated September 2, 1992 and for a direction to the State Government of Bihar to absorb them against existing vacancies available in different departments under the State Government. The said Writ Petitions have been allowed by the High Court by the impugned judgments dated February 18, 1994 and March 9, 1994. The High Court has directed the State Government to consider the cases of the retrenched census employees (hereinafter referred to as "the petitioners") who had filed the
- D Writ Petitions before the High Court for their absorption along with others at the time of regular appointment against suitable posts and that they should be given preference, if they are otherwise eligible for such appointment, and in case they are found over age, age relaxation equivalent to the period they have served in the Census Department, can also be provided, but such consideration shall be strictly in accordance with *inter se* seniority
- E of the retrenched employees of that year.
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H The High Court has proceeded on the basis that the Government of Bihar in its Cabinet meeting held on January 8, 1973 took a policy decision to provide employment by absorbing retrenched census employees and that the said policy decision was reiterated through various executive instruc-

tions of the State Government contained in letters dated April 7, 1982, May 14, 1985, February 14, 1986, May 5, 1987 and August 19, 1987. The High Court has also referred to the orders passed in other Writ Petitions relating to retrenched employees of 1971 and 1981 census wherein directions were issued to the State Government to consider the cases of retrenched employees of 1971 and 1981 census for employment under the State. The High Court was of the view that from time to time the authorities decided to consider the cases for absorption/appointment of 1991 retrenched census employees at the same pattern on which the other retrenched census employees were absorbed. Feeling aggrieved by the said judgments of the High Court, the State of Bihar has filed these appeals.

The question which requires examination is whether the Government of Bihar has taken a policy decision regarding absorption of the retrenched census employees of 1991 census operations. Before we proceed to examine the question, we would refer to the submission urged by Shri Vasudev Prasad, the learned senior counsel appearing for the petitioners, that the petitioners were employees of the State Government having been employed in connection with the census operations in the State of Bihar and that it was the obligation of the State Government to absorb them in service under the State. This contention has been raised for the first time in this Court. It was not urged before the High Court. Moreover, it runs against the case set up by the petitioners in Writ Petitions filed before the High Court wherein it has been stated that the Union of India in the Census Department had published an advertisement on January 26, 1991 in various daily newspapers inviting applications for census work in 1991 for Grade III and Grade IV posts of Supervisors, Checkers, Compilers, etc. in the various districts mentioned therein and that in accordance with the said advertisement some of the petitioners applied for appointment while names of some of them were directly forwarded by the Employment Exchanges in various districts and that after interview by a Selection Committee they were offered appointment by the Central Government in the Home Ministry and the petitioners accepted the offer of appointment and that on the basis of the said offer they were given temporary appointment in the Census Department of the Central Government and subsequently after the completion of the census operations their services were terminated. In view of the specific averments contained in the Writ Petition, there is no basis for the claim by the petitioners that they were employees of the State Government and, therefore, it is the obligation of

A the State Government to absorb them.

B We would now examine the question whether the Government of Bihar had taken a policy decision regarding absorption of the retrenched employees of 1991 census in the State services. In order to establish the case that such a policy decision had been taken, the learned counsel for petitioners has taken us through the various documents on which reliance has been placed by the High Court.

C Shri B.B. Singh, the learned counsel appearing for the appellants, has, however, submitted that those documents relate to retrenched census employees employed in connection with the census operations of 1971 and 1981 and do not relate to census operations of 1991 and that as regards the retrenched employees of 1991 census the policy of the State Government is that it is not possible to absorb them since it found great difficulty in absorbing the employees of 1981 census operations and there are a large number of retrenched employees of the State Government who are seeking absorption. We will, therefore, briefly refer to these documents.

E The first document is the Memo dated January 8, 1973 which deals with the priority to be given to the retrenched Government servants in appointments to be made to non-Gazetted Class III and Class IV posts. The said Memo is general in nature relating to employees who had been retrenched from Government service and directs that to the posts that are reserved as per rule for SCs/STs or Ex-servicemen only such candidates from the list of retrenched persons should be appointed who come in the above category and if there are no candidates belonging to these categories in the list then the candidates of SCs and STs or Ex-servicemen should be taken from outside and that 50% of the unreserved vacancies should be filled up on priority basis by the suitable candidates from amongst the retrenched hands and that the remaining vacant posts should be filled up by the outsiders by adopting the normal procedure. The said Memo makes no mention of retrenched census employees of the Central Government and it cannot, therefore, be construed as containing a policy decision regarding absorption of retrenched census employees of the Central Government, the letter dated April 7/8, 1982 from the Chief Secretary to all the Departments of the Government as well as the Head of Departments and District Magistrates relates to appointment of retrenched employees of the census operation offices in the State in Government.

offices. In the said letter it is stated that work in Bihar Tabulation Offices which were opened in different parts of the State under the census operation office has now been completed and the employees on account of the retrenchment of their services were facing problems of unemployment. By the said letter it was directed that arrangement should be made to appoint these retrenched employees against vacant posts by giving them priority in keeping with their individual qualification and merit and that the District Magistrate should get prepared panel of such Class III/IV employees who had been retrenched from census operation office and preserve the same with them so that in future as and when vacancy comes up he would fill up the post by appointing persons from this panel. It was, however, stated that there shall be no concession in age limit in making such appointment and that this other would not apply in cases of appointment made on the basis of written competitive examinations conducted by Bihar Public Service Commission or Lower Service Selection Board. In the letter dated May 14/17, 1985 from the Chief Secretary to all Departments of the Government, all Heads of Department, Divisional Commissioners, District Magistrates and undertakings of the State Government it was stated that the Government had taken a decision after due consideration to absorb the retrenched census employees of the census operations in the Government services by appointing them against vacancies on priority basis as per their qualifications as per the following directions :-

1. Where appointment is not being made by Bihar Public Service Commission or Lower Service Selection Board, at the district level if two persons out of whom one is a retrenched census employee from census is found suitable equally then the retrenched census employee may be given preference. This concession should be allowed only when it conforms to the prescribed appointment procedure and is within the frame work of reservation principles.

2. So far as relaxation of age limit is concerned, the period of service of the retrenched employee in census operation may be extended, but the maximum period of exemption should not exceed 3 years. Such exemption is admissible to only such retrenched employees of census operations who have worked for at least six months continuously in census operations.

3. The District Magistrates should prepare panel of IVth grade

A employees retrenched from census operation and keep it with them and the vacant posts and future vacancies should be filled up from this panel.

B 4. The Government should be kept posted with the information from time to time as to the appointments so far made or to be made in future in accordance with these instructions.

C The said directions were reiterated in the letter dated February 14, 1986 of the Chief Secretary to all Government Departments, All Departmental Heads, All Divisional Commissioners, All District undertakings. By the said letter the concerned officers were directed to furnish information about the total number of appointments that were made since April 8, 1982 and the number of retrenched census employees who were appointed. The next document is the letter dated May 5, 1987 from the Chief Secretary to all Departments of Government, all Heads of Department, Divisional Commissioners and District Magistrates. Shri Vasudev D Prasad has placed strong reliance on this letter and has submitted that it shows that the decision of the State Government regarding absorption was not confined to retrenched census employees of 1971 and 1981 census operations but was a general decision covering retrenched census employees of subsequent census operations also. We do not find anything E in the said letter which may lend support to this inference. The letter dated May 5, 1987 refers to the earlier letters dated April 8, 1982, May 17, 1985 and February 14, 1986, and after setting out the directions given in the letters aforementioned further directions with regard to absorption of retrenched census employees were given as under :-

F (i) the prohibitory orders in connection with not filling the existing vacancies in the State should not be applied in the cases of appointment of such employees;

G (ii) exemption regarding age limit be extended upto the age of 35 years;

(iii) the retrenched employee should be given the foremost priority subject to the condition that the retrenched employee holds prescribed qualifications showing his competence for the post, and

H (iv) the directions regarding reservation issued from time to time

would be fully applicable.

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The letter dated May 5, 1987 has to be read in the same context as the earlier letters referred to above. If the letter is thus read, it can only be construed to refer to retrenched census employees of 1981 census operations. There is nothing in the said letter which may indicate that it contains a policy for absorption for the retrenched census employees of future census operations also. Having considered the various letters on which reliance has been placed by the High Court, we are unable to hold that on the basis of the said letters it can be said that the Government of Bihar had taken a policy decision regarding absorption of retrenched census employees of future census operations including the retrenched census employees of 1991 census operations.

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Reference may now be made to the letters pertaining to the retrenched employees of 1991 census operations. A reference has already been made earlier to the letter of the Registrar General and Census Commissioner dated December 26, 1991 and the reply of the Government of Bihar dated September 2, 1992 to the said letter. The High Court has referred to letter dated July 23, 1992 from the Commissioner, Saharsa Division, and the letter of the Secretary to the Government of Bihar dated September 29, 1992 addressed to all the Commissioners. It appears that by letter dated March 4, 1992, the Director, Census Operations, Bihar, had made a request for absorption of retrenched census employees of 1991 and the Regional Census Employees Union, Saharsa Division, were also submitting a demand regarding employment of retrenched census employees of 1991 census. By his letter dated July 23, 1992, addressed to the Chief Secretary to the Government of Bihar, the Commissioner, Saharsa Division, sought directions about the decision of the State Government in this regard. In the said letter the Commissioner has made a reference to the earlier letter dated May 5, 1987 from the Chief Secretary containing instructions regarding adjustment of retrenched census employees of 1981 census and has stated that those employees have been absorbed in the regional offices. Thereafter the Secretary to the Government of Bihar, Department of Personnel and Administrative Reforms, Special Retrenchment Cell, addressed a letter dated September 19, 1992 to all the Divisional Commissioners and District Magistrates wherein he dealt with the matter of absorption of the retrenched employees from census office of Government of India. In the said letter it is stated that the State Government had

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A received a request from the Registrar General and Census Commissioner of the Government of India, regarding absorption of the employees who were in census offices of Government of India for census operation, 1991 and that the State Government having fully considered the case and has taken this decision, that it is not possible for the State Government to assimilate the retrenched employees of the census offices of the Government of India, because in different offices of the State Government itself there is an excess number of both retrenched and surplus employees waiting for readjustment. A copy of the letter No. 261 dated September 2, 1992 sent to the Registrar General and Census Commissioner of the Government of India was also enclosed for information.

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The letter dated September 29, 1992 from the Secretary to the Government of Bihar, Department of Personnel and Administrative Reforms, Special Retrenchment Cell, addressed to all Divisional Commissioners and District Magistrates referred to by the High Court was not sent in reference to letter of the Commissioner, Saharsa Division, dated July 23, 1992. The said letter dated September 29, 1992 deals with absorption of retrenchment/surplus staff of the State Government and it does not relate to retrenched employees of 1991 census operations which matter was specifically dealt with in the earlier letter dated September 19, 1992.

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Shri Vasudev Prasad has placed strong reliance on Memo dated October 18, 1993 from the Directorate of Employment and Training, Government of Bihar, addressed to all the Officers in-charge of Employment Exchanges in the State of Bihar. The said Memo relates to priorities/relaxation in the matter of appointment of retrenched employees of the regional census offices in the State of Bihar and makes a reference to letter of January 1993 received from the Directorate General of Employment and Training, New Delhi. By the said Memo it was directed that the necessary steps be taken in accordance with the rules by giving priority/relaxation to the retrenched employees who were employed in connection with 1991 census operations as per the directions of the Directorate General of Employment and Training on the receipt of the list of such retrenched employees from the Directorate of Census and its subordinate offices. The said Memo only contains directions for the Officers in-charge of Employment Exchanges to take steps according to the rules for giving priority/relaxation in the matter of registering and sponsoring the names of the retrenched employees of 1991 census operations in the matter

of appointment in the Government services/undertakings. There is nothing in the said letter to indicate that the Government of Bihar had given a commitment regarding absorption of the retrenched census employees of 1991 census operations in the service of the State Government. A

Shri Vasudev Prasad has also invited our attention to the advertisement dated April 21, 1993 (published in the newspaper 'Hindustan' dated May 17, 1993) issued by the District Employment Officer, Purnea, whereby applications were invited for appointment on Grade IV posts in the District Collectorate, Kishanganj and other district level offices of the State Government. In the said advertisement it is stated : "Preference shall be given to Discharged Census Employees". It has been submitted that this advertisement shows that the policy of the State Government was to give preference in the matter of appointment to discharged census employees of 1991 census. This contention is not borne out by the words used in the advertisement because it is not expressly stated in the advertisement that the stipulation regarding preference contained in this advertisement relates to discharged census employees of 1991 census. The said stipulation could be for the employees of 1981 census operations since the State Government had taken a decision for their absorption. Moreover from the rejoinder filed on behalf of the appellants it appears that not a single retrenched census employee of 1991 census operations has been appointed in Purnea on the basis of the said advertisement. B C D E

Our attention has also been invited to order dated January 10, 1996 relating to posting of 25 persons out of 26 retrenched census employees who had been appointed by order dated December 26, 1995 as Clerks. In the rejoinder filed on behalf of the appellants it has been pointed out that these 26 retrenched census employees had been employed in connection with 1971 and 1981 census operations and not for 1991 census operations. F

Thus there is nothing in the documents to which reference has been made by the High Court as well as in the documents on which reliance has been placed by Shri Vasudev Prasad which may indicate that the State Government had taken a policy decision for absorption of retrenched census employees of 1991 census operation. On the other hand, there are letters of the State Government dated September 2, 1992 and September 19, 1992 clearly stating that it was not possible for the State Government to absorb retrenched employees of 1991 census operations in the service G H

A of the Government of Bihar. There is no material on record to show that the decision of the State Government as contained in the letters dated September 2, 1992 and September 19, 1992 was modified subsequently by the State Government and it was decided to absorb such retrenched employees of 1991 census operations in the State service. In these circumstances, we are unable to uphold the impugned judgments of the High Court holding that in view of the policy decision taken by the State Government regarding their absorption the retrenched census employees of 1991 census operations are entitled to be absorbed in the State services and on that basis the said employees can claim preference or priority in the matter of such appointment in service under the State Government.

C Some of the petitioners had registered themselves with the Employment Exchange prior to their appointment in connection with 1991 census operations. Their names were forwarded by the concerned Employment Exchange and on that basis they were so appointed on a post connected with 1991 census operations and consequently their names were deleted from the register in the Employment Exchange. Since they have been retrenched from the census office, they are entitled to have their names restored in the register in the concerned Employment Exchange. Similarly, those retrenched employees of 1991 census operations who were not registered with any Employment Exchange can get themselves registered at an Employment Exchange. In accordance with the directions given by the Directorate General of Employment and Training, New Delhi, referred to in the Memo of the Director of Employment and Training, Bihar dated October 18, 1993, such retrenched census employees should be given priority/relaxation by the Employment Exchange wherein they are registered in the matter of sponsoring and forwarding their names for appointment against future vacancies.

G In the result, the appeals are allowed, the impugned judgments of the High Court, in so far as they direct that the retrenched employees of 1991 census operations are entitled to be given preference in the matter of appointment in the services under the State of Bihar, are set aside. The petitioners can apply for appointment against any post falling vacant if they fulfil the qualification and other conditions prescribed for appointment to such post and, if they so apply, they shall be considered in accordance with the rules governing such appointment. In case they are found to be over H age, one time relaxation in age may be given to them provided they were

within the age limit prescribed for appointment at the time of their initial recruitment in the census organisation. It is also directed that registration in the Employment Exchange of those petitioners who were earlier so registered prior to their appointment to the census organisation shall be restored and those who were not registered would be entitled to get themselves registered at the Employment Exchange. The petitioners who are thus registered with the Employment Exchange shall be given priority/relaxation in the matter of forwarding their names for appointment against future vacancies. No order as to costs.

B.K.S.

Appeals are allowed.