

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2967 of 2017

Anjani Kumar Choudhary S/o Suresh Chandra Choudhary, R/o Babu Tola,
Vikramshila Nagar, P.O. and P.S.- Kahalgaon, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The T. M. Bhagalpur University, Bhagalpur, through its Registrar.
2. The Vice-Chancellor, T.M. Bhagalpur University, Bhagalpur.
3. The Financial Advisor, T.M. Bhagalpur University, Bhagalpur.
4. The Registrar, T.M. Bhagalpur University, Bhagalpur.
5. The Finance Officer, T.M. Bhagalpur University, Bhagalpur.
6. The Principal S.S.V. College, Kahalgaon, District- Bhagalpur.
7. The State of Bihar, through the Principal Secretary, Department of Education Government of Bihar, New Secretariat, Patna.
8. The Director Department of Higher Education, Government of Bihar, New Secretariat, Patna.
9. The State Govt. Auditor, deployed at T.M. Bhagalpur, University, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Purushottam Kumar Jha, Advocate
	:	Mr. Avanindra Kr. Jha, Advocate
For the Respondent/s	:	Mr. Prabhakar Jha-GP 27
	:	Mr. Mukund Mohan Jha, AC to GP 27
For respondent/ University	:	Mrs. Rekha Prasad, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date : 15-09-2022

1. The present writ petition has been filed to direct the respondent- authorities to calculate the pension and post retiral benefits of the petitioner taking into account the services rendered by the petitioner in the College in question, right from the date of his initial appointment i.e. on 01.11.1976/ 01.06.1988 till the date of his retirement as a



regular employee on 31.12.2012.

2. The brief facts of the case, according to the petitioner, are that the petitioner was initially appointed on the post of Demonstrator in the Department of Physics in S.S.V. College, Kahalgaon on 01.11.1976, however upon takeover of the College in question, the services of the petitioner was not absorbed, hence he had represented before the respondent- University Authorities, whereupon the Registrar of the Tilka Manjhi Bhagalpur University, Bhagalpur (hereinafter referred to as “the University”) vide letter dated 08.08.1988, directed the In-charge Principal of the College in question to make payment of daily wages admissible to Class-III post w.e.f. 01.06.1988.

3. It is also the case of the petitioner that the respondent-University had issued an advertisement in Hindi Daily Newspaper namely Hindustan on 18.10.2001, whereby applications were invited from daily wages Class-III and Class-IV employees for their appointment in regular services of the respondent-University, whereupon the petitioner had also applied and participated in the selection process and then he was declared to have been successful in the said process of selection. Thereafter, the respondent- University, vide Office



Order No. 159 of 2002 dated 05.07.2002, had appointed the petitioner and others in the regular services on Class-III post against the sanctioned and vacant post with effect from the date of appointment/ date of availability of post, whichever may be later. The matter had then travelled to the Chancellor's Secretariat and finally, the respondent-University had issued final orders with regard to absorption of the services of the petitioner and others vide various Office Orders, however as far as the petitioner is concerned, the relevant Office Order is the one bearing Office Order no. 88 of 2006 dated 27.05.2006, whereby and whereunder the services of the petitioner and others were absorbed in regular services of the University w.e.f. 05.06.2003.

4. The learned counsel for the petitioner has submitted that in the aforesaid process of selection, 14 similarly situated Class-III employees of the Tilka Manjhi Bhagalpur University, Bhagalpur were also absorbed w.e.f. 05.06.2003, however the respondent- University vide Office Order no. 58 of 2007 dated 08.03.2007, had shifted back the effective dates of absorption of the said 14 employees from 05.06.2003 to the date of their respective initial appointment in the said College and subsequently, they have also been paid



all the consequential monetary benefits.

5. The learned counsel for the petitioner has relied on a judgment *dated 10.05.2006*, passed in the case of ***Rajendra Kamti and another v. L.N. Mithila University and others (C.W.J.C. no. 3274 of 2001)*** and other analogous cases to submit that a co-ordinate Bench of this Court, in the said judgment, has held that the petitioners of the said cases cannot be deprived or denied of their rights to join or add the past period of services rendered by them prior to absorption for earning pension and secondly, it has also been held that the petitioners of the said cases will be entitled to the period of service before regularization, right from the date of entry in service, even on daily wage basis, which shall have to be reckoned and shall have to be added with the period of service after regularization for the purposes of calculation of pensionary benefits including the family pension, to be granted to such employees.

6. The learned counsel for the petitioner has next relied upon a judgment rendered by a co-ordinate Bench of this Court *dated 21.04.2010*, passed in the case of ***Bhagalpur National College Shikshettar Karamchari Sangh and others v. The State of Bihar and others (C.W.J.C. no. 78 of 2006)***,



wherein it has been held that the employees of the said College in question are entitled to regularization/ absorption of their services with effect from the date of takeover of the College and has consequently, directed as follows :-

“ The University is directed to examine the service records of the individual employees treating them as regularized/ absorbed in the services of the University from the date of takeover of the College itself, calculate the arrears which may become payable to the employees of the College on this account, prepare a final calculation and submit the same to the State Government within four months with a formal requisition for the amount for disbursement to the concerned employees of the College. Once the requisition is received by the State Government from the University in this regard, the State Government shall be at liberty to check up the calculations only made by the University and if the calculations are found to be correct, the State Government shall release the amount, as appearing after final calculation, in favour of the University within two months thereafter. on receipt of the amount from the State Government the University will disburse the same to the



concerned employees within one month thereafter.”

7. The learned counsel for the petitioner has also relied on a judgment rendered by a learned Division Bench of this Court on **29.02.2016**, in the case of ***Jwala Prasad Singh v. The T.M. Bhagalpur University, Bhagalpur (L.P.A. no. 1844 of 2012)***, paragraphs, 4, 5 and 6 whereof, are reproduced hereinbelow :-

“4. We have gone through the records and we find that once this Court, in the case of, had already held that the employees were regularized Sushil Thakur (supra) by the University itself who have given the same benefits to other similarly situated employees including the writ petitioner/ appellant, when he was denying the retiral benefits, ignoring the judgment in case of Sushil Thakur (supra), had approached this Court.

5. In our view, the University could not have done so on the facts and circumstances being the same. We are of the opinion that the writ petition ought to have been allowed and for the period under consideration as noted above, the writ petitioner/ appellant had to be paid his



remuneration and the said period would have to be taken into account for granting him continuity in service and consequently in retiral dues.

6. *Therefore, we allow this appeal and set aside the order of the writ court, with a direction to the University to pay the arrears of the salary for the period in question and take note to consider the period of his service from 30.08.1999 to 04.06.2003 for the purposes of calculating his total period of service with all consequential benefits, in so far as retiral dues are concerned. ”*

It is submitted that the case of the petitioner is identical to the aforesaid case of ***Jwala Prasad Singh (supra)***

8. The petitioner has also relied on a judgment dated 06.04.2011, rendered by a co-ordinate Bench of this Court, in the case of ***Sushil Thakur v. T.M. Bhagalpur University and others (C.W.J.C. no. 2714 of 2006)***, wherein also, this Court was pleased to direct the State and the University to ensure payment to the petitioner of his due remuneration for the disputed period i.e. for the period February, 2001 to February, 2005 and to treat the said period as regular service for all purposes.



9. The learned counsel for the petitioner has further relied on a judgment *dated 27.09.2018*, rendered by a co-ordinate Bench of this Court in the case of *Nakul Prasad Singh v. The State of Bihar and others (C.W.J.C. no. 223 of 2017)*, to contend that this Court has held in the said case that if the service is rendered on a full time basis, including the period spent on probation either on temporary or officiating capacity followed without interruption by substantive appointment in the same or any other post, the same shall count as qualifying service and such period shall be reckoned for the purposes of calculation of the retiral benefits of the employee.

10. Lastly, the learned counsel for the petitioner has relied on a judgment *dated 03.07.2019*, rendered by a co-ordinate Bench of this Court in the case of *Sandhya Mandal v. The State of Bihar and others (C.W.J.C. no. 12318 of 2013)* as also in the case of *Satyendra Prasad Singh v. The State of Bihar and others (C.W.J.C. no. 4728 of 2013)* and other analogous cases to submit that in an identical situation as that of the petitioner herein, co-ordinate Bench of this Court has directed to count the services rendered by the writ petitioners of the said cases from the date



of their initial joining on the post in question, for grant of retiral benefits to them. In this regard, it would be apt to reproduce paragraphs no. 24, 26 and 27 of the said judgment rendered in the case of ***Sandhya Mandal (supra)*** hereinbelow :-

“ 24. Similarly, petitioner in CWJC No. 4728/2013 was appointed on the post of Orderly in S.S.V.College, Kahalgaon by the Governing Body of the concerned college and he joined his service on 10.3.1980. There is noting on the record to show that the services of the aforesaid petitioner was dis-continued and, admittedly, the above stated petitioner was retired on 31.12.2009. The stand of University is that the above stated petitioner was not appointed on a sanctioned post but even if it assumed that the appointment of aforesaid petitioner was not made on sanctioned post, then also, in the light of judgment of Braj Kishore Singh and others (Supra), the post of the aforesaid petitioner shall deemed to be sanctioned on the principle of Staffing Pattern because, subsequently, the Government approved the Staffing Pattern, therefore, in my opinion, the service rendered by the aforesaid



petitioner prior to 5.6.2003 should be counted for grant of retiral benefit to him.

26. On the basis of aforesaid discussions, C.W.J.C. No. 12318/2013, C.W.J.C. No. 4728/2013 and C.W.J.C. No. 6152 of 2013 are allowed and, accordingly, the respondents, particularly, the concerned University, i.e., Tilika Manjhi University, Bhagalpur, the Vice Chancellor, Tilika Manjhi University, Bhagalpur and the Registrar, Tilika Manjhi University, Bhagalpur are directed to ensure payment of retiral dues of the petitioners of above stated writ petitions within three months from the date of receipt / production of a copy of this order and shall also pay 9% simple interest on the retiral dues of the above stated writ petitioners.

27. It is made clear that the findings / observations given in this order has been passed only in respect of retiral dues of the petitioners and the findings / observations given in this order shall not shift the date of regularization of the petitioners.

11. *Per contra*, the learned counsel for the respondent- University has submitted that the cases of similarly situated employees have been dismissed by a



co-ordinate Bench of this Court vide order *dated 22.09.2017*, passed in *C.W.J.C. no. 14510 of 2015 and C.W.J.C. no. 14487 of 2015*. The learned counsel for the respondents has further submitted that though the petitioner was appointed by the Principal of S.S.V. College, Kahalgaon on 01.01.1976/01.06.1988 on Class-III post on daily wages, however his appointment was made against unsanctioned post and that too, without permission of the Vice-Chancellor. It is also submitted that the appointment of the petitioner was made by the Principal of the College without following the due process of law i.e. without advertisement and without resorting to proper selection process and that too on an unsanctioned post, hence the said appointment of the petitioner cannot be considered to be legal and valid so as to warrant consideration of the said period for the purposes of calculation of the retiral benefits of the petitioner herein. It is also submitted that the services of the petitioner was finally absorbed vide Office order no. 88 of 2006 dated 27.05.2006 w.e.f. 05.06.2003, hence any date of appointment earlier to 05.06.2003 cannot be considered for the purposes of computation of the retiral benefits of the petitioner herein.

12. The learned counsel for the respondent- University



has also submitted by referring to the supplementary affidavit filed on behalf of the University that in any view of the matter, the services of the petitioner has been counted w.e.f. 05.07.2002 i.e. the date of his first appointment in regular services of the University on Class-III post for the purposes of calculation and payment of the pensionary benefits to the petitioner despite the fact that the services of the petitioner was disengaged vide letter dated 30.08.1999 along with other irregular appointees and was absorbed, upon the direction of the State Government, only w.e.f. 05.06.2003. It is further submitted that the case of the petitioner is distinguishable from the cases of the petitioners of the cases relied upon by the learned counsel for the petitioner, inasmuch as the appointment of the petitioner was made on the basis of a fresh selection process, pursuant to issuance of an advertisement and upon the petitioner having passed the Employee's Selection Examination, 2002. It is also submitted that the claim of the petitioner that he was initially appointed on 01.11.1976/ 01.06.1988 is also not tenable in the eyes of law, inasmuch as the petitioner was neither appointed as per the staffing pattern nor against any sanctioned post nor his services were absorbed, either by the University or by the



State Government and on the contrary, he was appointed on daily wages, that too, without following the due process of law.

13. The learned counsel for the respondent- University has also referred to the fourth supplementary counter affidavit filed on behalf of the respondent- University to submit that since the petitioner was absorbed in the services of the University w.e.f. 05.06.2003 and had stood superannuated on 31.12.2012, his total period of service totals up to 09 years and 06 months.

14. It is stated by the learned counsel for the respondents- University that as per the Manual of Bihar Universities Law, qualifying service for pension means service rendered as a member of the staff of the University in a substantive capacity including period spent on probation. Thus, all services rendered in the University on a full time basis on a temporary or officiating capacity followed without interruption by substantive appointment in the same or any other post shall count as qualifying service except in respect of period of service rendered in “work charged” establishment and period of service, paid from “contingencies”.

15. It is also stated by the learned counsel for the



respondent- University that continuous temporary service of not less than 15 years (10 years in the case of those who retire on or after 31st March, 1980) shall also be counted as qualifying service even if the same is not followed by substantive appointment.

In view of the aforesaid Pension Rules, the case of the petitioner was considered for grant of pensionary benefits and his pension was fixed @ Rs. 3500 per month. The computation of pension as enumerated in the fourth supplementary counter affidavit, filed by the respondent- University, is reproduced herein-below :-

$$\frac{\text{Basic pay} \times \text{Units of } nx}{40} \times \frac{1}{2}$$

$$14340 \times \frac{20}{40} \times \frac{1}{2} = \text{Rs. } 3585$$

The unit of service has been calculated as below :

“ 2 units for 1 year of service, which means 20 units for 10 years of service, rendered by the petitioner, which is to be divided by double of its units which equals to 20/40.”

It is also submitted that as per the notification issued by the State Government, full pension is to be given to the employees w.e.f. 01.01.2006, only when they have



completed 20 years of service or more. Thus, in case, the petitioner would have completed 20 years of service or more, right from the date of his absorption, he would have been granted pension @ Rs. 7,170/- per month.

16. It is contended by the learned counsel for the respondent- University that the pension of the petitioner was initially fixed @ Rs. 3500 per month vide Letter no. Acc/2629 dated 16.08.2018, but later on, it was amended and fixed @ Rs. 3585 per month vide Letter no. Acc/4025 dated 23.10.2018.

As far as reliance of the petitioner upon the case of one Nakul Pd. Singh (C.W.J.C. no. 223 of 2017) is concerned, it has been submitted that the calculation of pension of the said Nakul Pd. Singh was done exactly in the same manner, as has been done in the case of the petitioner.

As far as the gratuity amount is concerned, it has been submitted that the same has been calculated in the following manner :-

(Basic Pay + DA at the time of retirement) x $\frac{\text{Units of service}}{04}$

= (14340+ 10324) x $\frac{19}{04}$ = Rs. 1,17,158/-

The unit of service being calculated in the



following manner :-

“ 2 units for 1 year of service i.e. 1 unit from three to six months and 2 units for 9 months to 12 months. “

As the total length of service of the petitioner is 9 years and six months, his units totals upto $9 \times 2+1= 19$ units.

It is also contended that in case, the petitioner would have completed 33 years of service from the date of his absorption in service, his gratuity amount would have been calculated in the following manner:

$$(14340+10324) \frac{66}{04} = \text{Rs. } 4,06,956/-$$

It has been finally submitted that the entire retiral benefits of the petitioner has already stood paid and now, nothing is left to be paid to the petitioner.

17. I have heard the learned counsel for the parties and gone through the materials on record, from which it is not in dispute that though the petitioner was appointed on 01.11.1976/ 01.06.1988 on daily wages as a Demonstrator in the Physics Department at S.S.V. College, Kahalgaon, however, the salary of the petitioner was stopped



subsequently, leading to him filing a representation before the respondent-authorities. Consequently, the Registrar of the respondent-University, vide letter dated 08.08.1988 had directed the In-charge Principal of the College in question to make payment of salary to the petitioner w.e.f. 01.06.1988. It is equally an admitted fact that on 18.10.2001, an advertisement was published for making appointments on Class-III/ IV posts, whereupon the petitioner had applied and participated in the selection process leading to his appointment vide Office Order no. 159 of 2002 dated 05.07.2002, in the regular services on Class-III post, however it appears that subsequently, the services of the petitioner was interrupted leading to the petitioner approaching the respondent-authorities, whereupon the respondent- University had issued Office Order no. 88 of 2006 dated 27.05.2006 regarding absorption of the petitioner w.e.f. 05.06.2003. The petitioner is stated to have superannuated from the University services on 31.12.2012. It is a matter of record that till date, the petitioner has not taken any steps to get his date of appointment/ absorption shifted from 05.07.2002 to 01.11.1976/ 08.08.1988 and now, has approached this Court, belatedly, only for computation of retiral dues and payment



thereof by taking into account the services rendered by him as a daily wager prior to 05.07.2002. A bare perusal of the judgments referred to hereinabove by the learned counsel for the petitioner rendered in the cases of *Rajendra Kamti and another (supra)*, *Sandhya Mandal (supra)* and *Satyendra Prasad Singh (supra)* would show that in the said cases, the posts of the incumbents therein were sanctioned as per the Staffing Pattern, hence appropriate relief was granted to them to the extent of counting of their services, rendered prior to the date of appointment/ absorption in the regular services of the University, for the purposes of grant of retiral benefits, whereas in the present case, the respondents have categorically stated that the petitioner was neither appointed earlier, on daily wages, against any specific sanctioned and vacant post nor due process of selection was followed nor the petitioner was appointed against any sanctioned post, as per the Staffing Pattern.

18. Another aspect of the matter is as to whether the petitioner had worked as a daily wager on ad-hoc basis continuously w.e.f. 01.11.1976/ 01.06.1988 till the date of his fresh regular appointment i.e. 05.07.2002, which in any view of the matter, has to be enquired into and determined by the



respondent-University, since the same is a question of fact. Thus, considering the facts and circumstances of the case, this Court finds that at the moment, no clear cut directions can be issued to the respondent-University to calculate the pensionary benefits of the petitioner taking into account his services rendered in the College in question, right from the date of his initial appointment as a daily wager on adhoc basis i.e. w.e.f. 01.11.1976/ 01.06.1988 till the date of his retirement i.e. 31.12.2012, on account of the necessity of verification and determination of the factual issues by the respondent- University.

19. This Court also finds that at best, the petitioner can draw some sign of semblance with the judgment rendered in the case of *Sandhya Mandal/ Satyendra Prasad Singh (Supra)*. Consequently, having regard to the facts and circumstances of the case, this Court deems it fit and proper to relegate the petitioner to the remedy of filing appropriate representation, along with all the relevant documents and the judgments being relied upon by him, before the learned Vice-Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur and in case, such a representation is filed within a period of four weeks from today, the learned Vice-Chancellor,



Tilka Manjhi Bhagalpur University, Bhagalpur shall make an enquiry with regard to the aforesaid factual issues involved in the case of the petitioner as also consider the law laid down in the case of *Satyendra Prasad Singh/ Sandhya Mandal (supra)*, if not overruled and take appropriate decision by passing a reasoned and a speaking order, in accordance with law, within a period of eight weeks, thereafter.

20. The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	21.06.2022
Uploading Date	15.09.2022
Transmission Date	NA

