

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4619 of 2021

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Vishnudeo Prasad Singh S/o Late Lattar Singh R/o Village-Chhatauni, P.O.-
Chhatauni, P.S.-Basopatti, District-Madhubani-847225.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Dept. of Education, Govt. of Bihar, Patna.
2. The Principal Secretary, Dept. of Education, Govt. of Bihar, Patna.
3. The Director, Higher Education, Dept. of Education, Govt. of Bihar, Patna.
4. The Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.
5. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.
6. The Secretary, Satya Narayan Sanskrit College, Chhatauni, Madhubani.
7. The Principal, Satya Narayan Sanskrit College, Chhatauni, Madhubani.

... .. Respondent/s

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Appearance :

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| For the Petitioner/s | : | Mr. Satyam Shivam Sundaram |
| For the State | : | Mr. Prabhakar Jha, GP 27 |
| | | Mr. Umesh Narayan Dubey, AC to GP 27 |
| For the University | : | Mr. Deepak Kumar |

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 29-08-2024

Heard Mr. Satyam Shivam Sundaram, learned counsel appearing on behalf of the petitioner, Mr. Prabhakar Jha, GP-27 appearing on behalf of the State as well as Mr. Deepak Kumar appearing on behalf of Kameshwar Singh Darbhanga Sanskrit University (hereinafter referred to as the “University”).

2. Petitioner has approached this Court for the following reliefs:-



(i) For quashing of memo no.1449 dated 07.09.2020, issued by the Department of Education, Govt. of Bihar, Patna under the signature of Special Secretary, Education Department whereby and whereunder claim of the petitioner for payment of salary after granting approval to the service of the petitioner, who was appointed and working as a Clerk since 15.10.1978 in Satya Narayan Sanskrit College (hereinafter referred to as the "College"), an affiliated unit of Kameshwar Singh Darbhanga Sanskrit University (hereinafter referred to as "University") has been declined by the State respondents citing reasons that the appointment of the petitioner has been made contrary to the prescribed provisions of the Bihar State Universities Act (hereinafter referred to as the 'Act').

(ii) For holding that the appointment of the petitioner on the post of Clerk on 15.10.1978 in the aforesaid College was lawful and in accordance with the concerned provisions of the Act.

(iii) For payments of arrears as well as current salary to the petitioner.

(iv) For any other consequential relief/reliefs to which the petitioner is found entitled to.

3. Learned counsel for the petitioner submits that the case at length is that, petitioner was appointed by the Governing Body of the college on the post of Second Clerk on 05.10.1978, after a decision taken by the Governing body of the said college issued under the signature of the Secretary of the Governing body. Pursuant to the aforesaid appointment,



petitioner submitted his joining on 15.10.1978 on the post of Second Clerk to the Principal of the College.

4. That on the request of the Governing body of the college, appointment of the petitioner along with others was approved provisionally by the University vide its letter no.190/82 dated 16.07.1982 issued under the signature of the Registrar of the University. The University decided to make adhoc payment to the petitioner and others from September 1987 till further order vide letter no.1084/88 dated 08.02.1988 issued under the signature of the Registrar of the University.

5. The payment of salary to the petitioner has been made by the University from September, 1987 to 1999 and from March, 2008 to 2011.

5. He further submitted that the similarly situated persons as well as Karamchari Mahasangh of the said University filed a batch of writ applications. Among all the writ application, leading case is CWJC No.9222/1991 reported in 2003 (3) PLJR 749 (Annexure-7 of the writ petition). The Court disposed of the aforesaid writ application by its order dated 25.06.2003 with a direction to the University to submit the details of all the concerned persons, to the state authorities which was directed to be scrutinized at the level of the State Govern-



ment within a period of four months.

6. In compliance of the aforesaid direction, the State authorities took a decision to regularize the service of 33 persons including one Aditya Nath Jha who has been appointed in the same college to the post of Assistant Librarian on 01.04.1981 (after about three years of petitioner's appointment).

7. The petitioner, thereafter, moved before this Court claiming similar relief in C.W.J.C. No.13922 of 2008 (Annexure-9) which was disposed of by this Court with direction to the State Government authorities to take appropriate decision within one month from the date of receipt of representation.

7. In light of the aforesaid direction, the University issued an office order dated 25.02.2011, started the payment of salary to the petitioner and other similarly situated persons (Annexure-11). Thereafter, when the payment of salary was again stopped in 2011, the College has written to the State Government and also the budget for payment of salary has been submitted. (Annexure-13).

8. He further submitted that petitioner once again approached this Court in C.W.J.C. No.15442 of 2014 which was disposed of vide order dated 27.09.2018 (Annexure-16) with direction to the State authorities to consider the case of the pe-



petitioner in the light of Full Bench judgment of this Court in ***Braj Kishore Singh case reported in 1997 (1) PLJR 509*** within a period of two months.

9. The State authorities thereafter vide order dated 07.09.2020 (Annexure-17) rejected the claim of the petitioner on two grounds:-

(i) That before appointment of the petitioner prior permission was not obtained from the department which is required under Section 35(2) of the Bihar State Universities Act, 1976.

(ii) The appointment of the petitioner was found beyond the sanctioned strength. (Annexure-17).

10. According to the State Government, the sanctioned strength is 10+2+2 which is contrary to the facts and law considered in Full Bench decision of this Court.

11. According to the staffing pattern fixed by the Bihar Inter University Board, Patna which was approved by the State Government on 19.01.1980, (Annexure- P/19 of Supplementary Affidavit) there are four posts of Clerk + 1 Typist + 1 Instructor + 1 Librarian, were approved in the colleges having upto 400 students.

12. He further submitted that the Full Bench decision has



categorically laid down that 'the appointment made against the posts within staffing pattern need no prior sanction from the State Government' and further that 'as per the resolution of the then H.R.D. Department, contained in Memo No.989 dated 10.05.1991, the benefit of regularization is available to those appointed prior to 10.05.1986 against available vacancies keeping in view the reservation roster. Those who cannot be adjusted for want of vacancies may also be allowed to continue in service so that they may be adjusted against future vacancies'. The services of those appointed after 10.05.1986 are to be terminated.

13. He lastly submitted that the since the petitioner has been appointed prior to 10.05.1986 against the posts, approved under staffing pattern deserves to be regularized. Now, the petitioner has already superannuated during the pendency of this writ application on 22.02.2022 after serving 44 years of service.

14. Learned counsel for the State submitted that the petitioner was appointed on 2nd post of Clerk, which is not a sanctioned post and from perusal of the writ application it appears that admittedly, the so called appointment of the petitioner was made without any advertisement against the unsanctioned



post. It is clear that the University has approved the appointment of the petitioner provisionally with a condition that the payment shall be made after receipt of grant by the State Government.

15. He further submitted that there is a violation of Section 35 (2) and 10(6) of the Act. The Section 35 of the Act deals with the creation and sanction of teaching and non-teaching post in the University and College. Relevant portion of Section-35 is being quoted below:-

Section-35:- No post for appointment shall be created without the prior sanction of the State Government- Notwithstanding anything contained in this Act, no University or any College affiliated to such a University, except such college.

i. After the commencement of the Act, no teaching or non-teaching post involving financial liability shall be created without the prior approval of the State Government.

(2) Notwithstanding anything contained in this Act, no College other than one mentioned in clause (a) and (b) of Sub-Section (1) shall after commencement of this Act, appoint any person on any post without the prior



approval of the State Government.

Provided that the approval of the State Government, shall not be necessary for filling up the sanctioned post of teacher for a period not exceeding six months by a candidate possessing the prescribed qualification.

16. The Section 10(6) of the Act reads as follows;

10(6). The Vice Chancellor shall be subject to the provisions of this Act, the Statutes and the Ordinances have power to make appointment to posts within the sanctioned grades and scales of pay and within the sanctioned strength of the ministerial staff and other servants of the University not being teachers and officers of the University and have control and full disciplinary powers over such staff and servants.

17. He further submitted that the aforesaid report of the University was considered by the State Government and it has been found that the appointment of the petitioner was made against the unsanctioned post without prior approval of the State Government, therefore, the appointment of the petitioner was illegal. Accordingly, the State Government vide its order as contained in memo no.1449 dated 07.09.2020 rejected the claim of the petitioner.



18. Learned counsel for the State relied upon judgment passed by the full bench of this Court in a case reported in **2013(1) P.L.J.R. 964 (Ram Sewak Yadav vs. the State of Bihar)**. In para-43 of the said Judgment, this Court held that:

(i) *Secretary, State of Karnataka Vs. Uma Devi 2006 (4) SCC 1*, prohibits regularization of daily wages, casual, ad-hoc and temporary appointments, the period of service being irrelevant.

(ii) An illegal appointment void ab initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularized under any circumstance.

(iii) Irregular appointment can be regularized if the appointment was made by an authority competent to do so. It was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

(iv) The appointment must not have been an individual favour doled out to the appointee alone and the person must have continued in service for over 10 years without intervention of any Court order.



19. He lastly submitted that in view of the facts stated above, this writ petition is fit to be dismissed.

20. A counter affidavit is also filed on behalf of the University in which it is stated that this is the third attempt of the petitioner before this Court. First time he moved before this Court in CWJC No.13922 of 2008 (Annexure-9 of the writ petition) with a prayer to release arrears of salary as well as current salary. The aforesaid writ petition was disposed of on 20.09.2010 with a direction to the concerned authority to consider and dispose of the claim of the petitioner for payment of arrears of salary. In pursuance of the order of this Court, University issued an Office Order on 25.02.2011 (Annexure-11 of the writ petition) with a direction to make payment of salary from March 2008.

21. He further stated that the second time petitioner moved before this Court in CWJC No.15442 of 2014 for approval of his service. The aforesaid writ petition was disposed of on 27.09.2018 (Annexure-16 of the writ petition) with a direction to take decision for grant of approval of service of the petitioner and for payment of salary.

22. It is a fact that the petitioner was appointed by the Governing Body of the College on Second post of Clerk which is



unsanctioned.

23. The University has issued letter no.190/82 dated 16.07.1982 (Annexure-3 to the writ petition) and granted provisional approval to the appointment of petitioner with a condition that the post will be sanctioned by the Government and payment will be made only after receipt of grant from the Government. This shows that the Governing body has appointed petitioner against unsanctioned post.

24. I have heard the parties at length. It is a fact that during the pendency of this writ petition, petitioner has already superannuated on 22.02.2022, after giving service for 44 years. It is also admitted that petitioner moved before this Court for grant of his right but no positive order was passed by the concerned authorities. The thrust of the petitioner's case is that the State Government has laid down guidelines vide resolution of the Human Resources Development Department contained in memo no.989 dated 10.05.1991 and the respondents are therefore required to take a decision in light of those guideline. It was pointed out that as per the said resolution, the benefit of regularization is available to those appointed prior to 10.05.1986 against available vacancies keeping in view the reservation roster. Those who cannot be adjusted for want of



vacancies may also be allowed to continue in service so that they may be adjusted against future vacancies. The services of those appointed after 10.05.1986 are to be terminated. It was stated that all the petitioners herein are pre-10.05.1986 appointed and therefore, they are entitled to remain in service.

25. The judgment of Full Bench of this Court passed in *L.P.A. No.36 of 1994 Braj Kishore Singh And Ors. vs State Of Bihar And Ors.* It is mentioned in para-9 that if the appointment of a person is found to be illegal for want of sanction of the posts by the State Government in view of the provisions of the Section 35 of the Universities Act, it would be appropriate at this stage to notice the relevant provisions as hereunder:-

Notwithstanding anything contained in this Act, no University or any College affiliated to such a University except such College-

(a) As is established, maintained or governed by the State Government; or

(b) As is established by religious or linguistic minority;

(i) After the commencement of this Act no teaching or non-teaching post involving financial liabilities shall be created without the prior approval of the State Government;

(ii) Shall either increase the pay or allowance attached to any post, or sanction any new allowance;

Provided that the State Government may, by an order, revise the pay-scale attached with such post or sanction any new allowance;



(iii) Shall sanction any special pay or allowance or other remuneration of any kind including ex-gratia payment or any other benefit having financial implication to any person holding a teaching or non-teaching post;

(iv) Shall incur expenditure of any kind on any development scheme without the prior approval of the Government.

(2) Notwithstanding anything contained in this Act, no college other than one mentioned in Clauses (a) and (b) of Sub-Section (1) shall, after the commencement of this Act, appoint any person on any post without the prior approval of the State Government:

26. Para-21 of the aforesaid judgment states that the point for consideration is whether appointments made by the College/University authorities against sanctioned posts, i.e., posts within the staffing pattern are to be accepted as final. As noticed above, Section 35 of the Act provides for prior approval both in the matter of creation of posts as also in the matter of appointment. Creation of post is the earlier stage, actual appointment comes next. As noticed above, there cannot be a College without the teachers and without teachers the College cannot be granted affiliation, the relevant part of, Section 35 requiring prior approval in the matter of appointment has to be read down to include 'post facto' approval otherwise the provision may become unworkable and lead to anomalous or absurd situations. One of the objects underlying Section 35 is that appointments are made of persons possessing necessary eligibility and qualifications and in accordance with law. This



object can be achieved even without insistence on 'prior approval' in each and every case. In appropriate cases, the appointment can be made subject to 'post facto' approval of that State Government after such scrutiny of the qualifications and the recruitment process as may be necessary and appropriate. Such appointments, made by the College/University authorities, should not be treated as final; they shall have legal effect and sanctity only after approval of the State Government.

27. In view of the foregoing discussions, I set aside the memo no.1449 dated 07.09.2020 issued by the Department of Education, Government of Bihar, Patna under the signature of Special Secretary, Education Department. The concerned authority is also directed to regularize the service of the petitioner. Since, the petitioner has already superannuated on 22.02.2022, after giving 44 years of service, the authorities are directed to give all consequential benefits to him from the date of his initial appointment i.e. from 05.10.1978.

28. The concerned authorities must comply the present order within a period of three months from the date of receiving of a copy of this order.

29. It is made clear that the concerned authorities shall be held responsible for non-compliance of this order within the



stipulated period.

30. With the aforesaid direction and observation, this writ application stands allowed.

(Anjani Kumar Sharan, J)

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