

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7703 of 2020

Aditya Shankar Singh S/o Late Jagdish Singh, Resident of Mohalla- A.G. Colony, House No.- A/ 219, Ashiyana Nagar, Post Office - Shastri Nagar, Police Station - Shastri Nagar, District- Patna.

... .. Petitioner

Versus

1. Union of India represented through Secretary, Ministry of Human Resources Development, Government of India, Shastri Bhawan, New Delhi. PIN - 110001.
2. Indira Gandhi National Open University, Maidan Garhi, New Delhi.
3. The Vice-Chancellor, Indira Gandhi National Open University, Maidan Garhi, New Delhi.
4. The Registrar, Indira Gandhi National Open University, Maidan Garhi, New Delhi.
5. The Registrar, Indira Gandhi National Open University, Regional Centre, Patna Institutional Area, Mithapur, Patna - 800001, Bihar (India).
6. Regional Director, Indira Gandhi National Open University, Regional Centre, Patna Institutional Area, Mithapur, Patna - 800001, Bihar (India).
7. Dr. Meeta Assistant Regional Director, Indira Gandhi National Open University, Regional Centre, Patna Institutional Area, Mithapur, Patna - 800001, Bihar (India).

... .. Respondents

Appearance :

For the Petitioner	:	Mr.Ajit Kumar, Advocate
For the State	:	Ms.Shilpa Singh, Adv. with
	:	Ms.Abhanjali, Adv.
For the Union of India	:	Mr.Dr. K.N. Singh (Addl. S.G.) with
	:	Mr.Tuhin Shankar. Adv.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 06-10-2021

Heard learned counsel for the parties.

2. Following is the relief, which the petitioner is seeking:-

“(i) For issuance of appropriate Writ/Writs, direction/directions in the



nature of Certiorarified mandamus calling for the connected records and to hold/declare the Termination Order as bad in law, Communicated to the petitioner in person on 01.03.2020, on the ground that the action is opposed to Public Policies besides being in the teeth of settled Legal Position by which Temporary Employees having worked for more than a decade has been removed/replaced by another set of Temporary person, without any rhyme or reason and in consequent thereto, be pleased to direct the respondents to reinstate the Petitioner on the post falling in the Ministerial Cadre, for which engagement was made in the year 2007 for providing Ministerial and Orderly Services vide Decision as contained in F.No.- IG/RC/05/2007/Pers/5130 dated 14/15.12.2007, with all consequential benefits.

(ii) For further kind indulgence of this Hon'ble Court to direct appointment in the ministerial cadre be made permanent and due preference/weightage to the person already under Temporary Employment and being conversant with the working pattern be extended as against the candidates from the open category to bring quietus to the ongoing exploitation of ministerial staffs working on Temporary basis and further be pleased to direct stay of impugned



termination including interim financial relief to the petitioner during the Pandemic period to maintain his family members, which in the opinion of the Hon'ble Court is found fit and proper during the pendency of the writ application.

(iii) For any other relief/reliefs which the Hon'ble Court may grant in the interest of the petitioner that may be deemed appropriate and necessary in this case."

3. It is the petitioner's case that by an order dated 15.12.2007 issued under the signature of the Regional Director, Regional Center, Indira Gandhi National Open University (in short IGNOU), respondent no. 6, the petitioner was engaged for providing ministerial and orderly services for a period of 80 days, starting from the date of his joining. The said letter dated 15.12.2007 has been brought on record by way of Annexure-1 to the writ application. It is his further case that the petitioner used to receive fixed remuneration in his Bank account and account with Employees Provident Fund Organization (EPFO) was also opened vide (UAN) 100027877256. The petitioner has brought on record copy of his passbook to demonstrate that he was regularly receiving remuneration from the IGNOU.

4. The petitioner has further pleaded that the IGNOU was earlier functioning from BISCOMAUN building. The



functioning of the IGNOU was subsequently shifted to institutional area in 2018, when petitioner's service was discontinued for 12 months but on intervention of the Regional Director, the matter was resolved and the petitioner was taken back in the service of IGNOU. It is also the petitioner's case that in the month of March, 2020, the petitioner has been removed from service along with other persons, though no formal letter of termination has been issued and two persons have been appointed on temporary basis against the vacancy so created, they being "blue-eyed" persons of Respondent No. 7. It is his further case that because the petitioner had health issues, he could not approach this Court immediately thereafter. Further, since lockdown was announced because of COVID-19 pandemic soon afterwards, the petitioner could not make any representation before the authorities. Subsequently, however, he made representation to the authorities, copies of which have been brought on record by way of Annexure-4 (series).

5. A counter affidavit has been filed on behalf of the IGNOU wherein it has been stated that the petitioner was initially engaged for a period of 80 days for providing ministerial and Orderly services as daily wage staff. The IGNOU had hired his service from time to time through three manpower supplying



agencies during different phases of engagement. It is the case of respondent IGNOU that three manpower supplying agencies namely (i) Popular Sainik Securities Agency, (ii) M/s Intelligence Security of India and (iii) M/s Kumar Shri Vikash had been supplying manpower to the University. In that course, the petitioner's services were made available by the agency. It is specifically stated that the petitioner was employee of the said agencies and removal/replacement can/could be done by the aforesaid agencies and not by the IGNOU. It has also been stated that the petitioner never worked for a full month for the University but on daily wage, depending on his placement/replacement by the said agencies. It has been reiterated that the petitioner was neither an employee of IGNOU nor was given any temporary employment in the ministerial cadre at the time since when according to the petitioner, his services have been discontinued. It has further been stated that the petitioner was receiving remuneration from his employer i.e. manpower supplying agencies namely Popular Sainik Securities Agency, M/s Intelligence Security of India and M/s Kumar Shri Vikash.

6. In a supplementary affidavit filed on behalf of the petitioner, it has been stated that during the pendency of this writ application, the petitioner was asked by P.A. to Respondent No. 6



to see Respondent No. 6. According to the petitioner, he had gone to see the Regional Director and when he met the Regional Director, he was given an offer to join the duty from the very next day but declined to issue any formal order in that regard. The petitioner is said to have requested Respondent No. 6 to issue some office order, as the matter was subjudice. The said statement made in the supplementary affidavit has been described in the counter affidavit, as false. It has been specifically stated that though the petitioner did meet the Regional Director but no offer or assurance was given by the Regional Director for the petitioner to join rather a categorical inability was shown to the petitioner's request for joining.

7. It may be noticed at this stage that that learned counsel for the petitioner was unable to point out any document to substantiate the pleadings and his contention that the petitioner was being regularly paid daily wages right from his initial engagement. On 26.03.2021, learned counsel for the petitioner had sought adjournment to file a supplementary affidavit to bring on record the statements and documents in support of his contention that the petitioner was being regularly paid by the IGNOU. A supplementary affidavit has been filed stating therein that the IGNOU was deliberately not bringing on record the relevant



record through which the petitioner and other ministerial staffs were being paid salary, which was later on channelized through private agencies, just to jeopardize the rights of the petitioner and other similarly situated persons. The petitioner has stated that these agencies were neither the employers of the petitioner nor the petitioner was ever appointed by them in their establishment for sponsoring to any organization. It has further been stated that the IGNOU adopted this device to make payment through these agencies and during the period when the agencies stopped working for IGNOU, the IGNOU used to pay salary/remuneration to the petitioner, which goes to suggest that the petitioner was engaged by IGNOU. The petitioner has brought on record the entries in the passbook from 2017 till the date of his termination. The petitioner has further stated that he could not get the print out of the passbook for the period prior to 2017 but the passbook entries do reflect the transfers made by the IGNOU on various occasions, though entries of payment of salary by agencies are also being reflected.

8. Mr. Ajit Kumar, learned counsel for the petitioner has relied on Supreme Court's decision in case of *State of Haryana and Ors v. Piara Singh* reported in (1992) 4 SCC 118 to contend that long continuance of the petitioner's service in the University



raises a presumption for regular need of his service and, therefore, it is incumbent upon the IGNOU to consider his case for regularization. He has also placed reliance on another Supreme Court's decision in case of *BALCO Captive Power Plant Mazdoor Sangh and Anr.* reported in (2007) 14 SCC 234 to contend that this being an admitted fact that the petitioner was working for the IGNOU which is state within the meaning of Article 12 of the Constitution of India, after long years of continuous service, it cannot discontinue the petitioner's services by bringing in other persons in his place. He has submitted relying on decision in case of *BALCO Captive Power Plant Mazdoor Sangh* (supra) that discontinuing the services of the petitioner, in the facts and circumstances of the case would be violative of Article 14 of the Constitution of India. Reliance has also been placed on the Supreme Court's decision in case of *Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors.* reported in (2006) 4 SCC 1.

9. Mr. Tuhin Shankar, learned counsel appearing on behalf of the respondent IGNOU, on the other hand, has submitted that this writ application under Article 226 of the Constitution of India is not maintainable inasmuch as the petitioner has not been able to demonstrate any material in support of his plea that he was



engaged by IGNOU on the date w.e.f. which his service came to be discontinued. He has argued that, the IGNOU had outsourced all its stopgap/temporary work to a work contractor-cum-manpower service agency in July, 2009 which system is continuing till date. The petitioner was on the rolls of the manpower service agencies since July, 2009 and was being deployed by the agencies from time to time, depending on work requirement by the IGNOU. He has argued that all such daily wage employees were deployed at the discretion of the said manpower service agency, as per work requirement and the IGNOU did not have any choice of the person to be deployed or withdrawn. Referring to the petitioner's own averment made in paragraph 9 of the writ application, he has argued that the petitioner himself has admitted that in the year 2018, the petitioner's service was discontinued for almost 12 months but with the intervention of respondent no. 6, it was resolved. He has argued that the petitioner has attempted to mislead this Court by asserting that he was engaged by the IGNOU knowing well that he was being engaged by private agencies for serving IGNOU on requirement basis from time to time. He continued with the said system without any dispute for 11 long years. He has further submitted that the petitioner does not have any cause of action



against the IGNOU and the two daily wagers, as referred to by the petitioner, have also been deployed by the said manpower service agency. According to him, there is no termination order nor any communication/decision of the IGNOU in respect of the petitioner. Petitioner's salary and provident fund contributions also were being paid by the agencies. He has placed reliance on Supreme Court's decisions in case of *Mathura Refinery Mazdoor Sangh v. Indian Oil Corporation* reported in (1991) 2 SCC 176 and *Dena Nath and ors. v. National Fertilizers Ltd. and Ors.* reported in (1992) 1 SCC 695 in support of his submission to counter the petitioner's claim.

10. In view of the certain admitted facts, which have emerged from the materials on record, this Court is not required to the address unnecessary issues which have been raised while making submissions on behalf of the parties. The petitioner has brought on record his passbook of the savings Bank account maintained with Andhra Bank in support of his pleading that he was regularly receiving his emoluments from the IGNOU for the services rendered by him. The entries in the said passbook do not support the petitioner's case rather they contradict them. The amounts were credited in the petitioner's account as salary from the account of 'intelligence' for certain period. It is true that in the



months of March and May sums of Rs. 8,000/- and Rs.10,400/- appear to have been credited in the petitioner's account by IGNOU. In the month of June, 2019 also, a sum of Rs. 2000/- was deposited in the petitioner's account by IGNOU through NEFT. Barring these payments for the months noted above, there is nothing to show that IGNOU had made any payment to the petitioner. It is clear from the entries that amounts were transferred and credited in the petitioner's account through NEFT from the account of M/s Kumar Shri Vikash. In December, 2012, an amount of Rs. 1200/- was transferred by IGNOU in the petitioner's account.

11. In my opinion, on the basis of aforesaid facts, the petitioner has not been able to make out a case for relief, as sought in the writ application. On the assertion that for some point of time, the petitioner was given employment on daily wage, he cannot claim for regularization in a proceeding under Article 226 of the Constitution of India. He has not been able to make out a case that the petitioner rendered uninterrupted service to IGNOU for a considerable period of time on engagement by IGNOU. It is clear from the pleadings and materials on record that the petitioner was rather engaged by a private agency/body, with whom, the IGNOU had agreement to supply manpower.



12. Reliance on the decisions on behalf of the petitioner in case of *Piara Singh* (supra), *Balco Captive Power Plant Mazdoor Sangh* (supra) and *Umadevi* (supra) are wholly misplaced in the given facts and circumstances of the case.

13. This writ application is meritless and is accordingly dismissed.

14. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

AKASH/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.10.2021
Transmission Date	N/A

