

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.553 of 2015

In
Civil Writ Jurisdiction Case No.11805 of 2007

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Pramod Kumar Jha s/o Late Raghunath Jha r/o Village - Morsanda , P.S
Korha, District Katihar at present residing at Mohalla Sipahi Tola , Police
Station - K. Hat, District Purnia

... .. Appellant/s

Versus

1. The Bhupendra Narayan Mandal University, Laloo Nagar, Madhepura through its Registrar
2. The Vice Chancellor, Bhupendra Narayan Mandal University , Laloo Nagar , Madhepura
3. The Principal Secretary to the Government, Department of Higher Education, Government of Bihar, Patna
4. The Registrar , Bhupendra Narayan Mandal University , Laloo Nagar, Madhepura.
5. The Principal, Purnia Mahila College, Purnea.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Subodh Kumar Jha
For the Respondent/s : Mr.Rajesh Singh

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 01-12-2020

Heard the parties.

This LPA has been preferred for setting aside the
order dated 26.03.2014 passed in C.W.J.C. No. 11805/2007
passed by learned Single Judge of this Hon'ble Court by which



writ petition filed by appellant for his regularization/absorption against class IV post as well as for setting aside order of termination dated 15.10.2011 passed during pendency of writ petition has been dismissed.

According to appellant, he was appointed on daily wages on class IV post on 22.12.1989 against sanctioned and vacant post and appellant rendered his services on class IV post without any salary and after issuance of letter dated 04.03.1992 by the Registrar of L.N.M. Mithila University, Darbhanga, appellant was paid salary on daily wages from the college Fund from November 1991. A new University being B.N. Mandal University was established with effect from 4.3.1992 and the Purnia Mahila College fell in the territorial jurisdiction of B. N. Mandal University.

Counsel for the appellant has referred to several enclosures in support of his contention that similarly placed daily wage employee have been regularized/absorbed by the University, however, petitioner has been discriminated by not regularizing/absorbing his service although he is similarly placed. Annexure 1 dated 24.1.1981 is a letter issued by the State Government to the Registrar, L. N. Mithila University, Darbhanga in which two posts of Class IV have been created



and approved by the State Government in the Purnia Mahila Mahavidyalaya. Annexure 2 is a letter dated 4.3.1992 issued by Registrar, L. N. Mithila University, Darbhanga to the Principal Purnia Mahila College in which Vice-Chancellor has directed for payment of wages from November 1991 to Class III and IV grade employees of the College who were working on daily basis, which included name of petitioner Pramod Kumar Jha. Similar letter was issued on 8.3.1994 and 28.8.1998, as contained in Annexure 5 and 3 respectively in which direction has been issued by the Vice-Chancellor to make payment to daily wagger working on Class III and Class IV posts from college Fund. Annexure 6 is notification dated 3.10.1994 by which Vice-Chancellor has directed to continue payment of salary / wages to Class III and Class IV employees who were appointed against sanctioned posts and were getting salary / wages from the college Fund which also included the name of petitioner. Annexure 9 is a letter dated 7.9.2006 of Principal, Purnia Mahila College addressed to Registrar, B. N. Mandal University, stating therein that petitioner and another are continuously working on Class IV post against two sanctioned posts and their services can be regularized.

Counsel for the appellant has brought to the notice of



this Court notification dated 19.1.2001 issued by B.N. Mandal University by which Rajiv Ranjan Singh, Typist who was also appointed on daily wages on Class III post was regularized although recommendation of petitioner was also made vide Annexure 7 along with Rajiv Ranjan Singh. One daily wage employee Hemant Kumar was also regularized by notification dated 05.08.2002 issued by B. N. Mandal University. Services of 29 persons working on daily basis on different Class III and IV posts in T.P. College, Madhepura were regularized after order of Hon'ble Court dated 8.12.2011 passed in C.W.J.C No. 4623 of 2009. Similarly services of three persons working on daily basis in M.L.T. College, Saharsa were regularized pursuant to order dated 1.8.2011 passed in C.W.J.C. No. 4838 of 1998 as well as order passed in C.W.J.C. No.3197/1997.

During pendency of writ petition, advertisement No.1 of 2009 was issued for regular appointment on Class III and Class IV post and appellant filed I.A. No. 2678/10 with a prayer to make payment of wages as well as to grant weightage of service while considering his application for regular appointment pursuant to said advertisement which was disposed of by order dated 31.3.2010 which reads as follows:-

“This I.A. has been filed by the petitioner for an interim order for payment of his wages due since March,



2007 claiming that he is continuously working in the College. A further interim order has been prayed that he may be given due weightage of service and experience while considering his case for fresh appointment pursuant to advertisement no. 01 of 2009. So far as wages are concerned, if the petitioner had been actually working in the college, he was entitled to the wages on which he was appointed or on the rate it was last paid to him. So far as grant of due weightage of his service and experience for consideration of his case for fresh appointment is concerned, that is within the domain of the University. The University will consider the same in accordance with law preferably within a period of one month.

The I.A. is thus disposed of.”

However, no appointment was made on Class III and IV post due to ban imposed by the State Government till rationalization of posts of non-teaching staff which was being done as Intermediate college was to be separated from degree college. Learned Single Judge has re-produced the stand taken by State of Bihar and University in their Counter affidavit, para 15 of which reads as follows:-

“15. That it is specifically and candidly stated here that ban imposed on appointment of Class-III and Class-IV employees is for a short duration and in any event it would be lifted once the rationalization of non-teaching employees is complete and Intermediate Education is separated completely from the University Education. This process will take maximum 8 to 10 months time. However due care has been taken by the State Government by authorizing the University to out source on low end activities so that



academic work of the colleges may not suffer.”

During pendency of writ petition, order of termination dated 15.10.2011 was issued by the University against all daily wage employees and said order was issued pursuant to notification dated 8.3.2007 issued by the Registrar of the University in compliance of direction issued by this Court in MJC No.538 / 2004, however, wages of daily rated employees were paid for the period they were engaged on daily wages and I.A. No. 2678/11 was filed by appellant for amendment of relief to quash the order of termination dated 15.10.2011.

The learned Single Judge has held that during pendency of writ petition rules regarding appointment of Class III and Class IV posts have been framed and services of Class IV was to be outsourced. The statute framed by the Hon’ble Chancellor clearly lays down that class IV post will be outsourced and the University will not employ any permanent employee against such post and as petitioner was a daily wager whose engagement was terminated on 15.10.2011, no order for his regularization or absorption can be passed as Class IV post stands abolished in view of statute framed by Chancellor issued vide notification dated 4.3.2014, according to which, even the daily wage class IV post will be filled by way of outsourcing.

It was submitted on behalf of learned counsel for the



appellant that since appellant was working for last many years as a daily wage employee on a class IV sanctioned and vacant post, as such, in terms of judgment and order passed by the Apex Court in case of *State of Karnataka Vs. Uma Devi reported in 2006 (4) SCC 1*, and in case of *State of Karnataka and Ors. Versus M. L. Keshari and others reported in 2010 (9) SCC 247* order of termination may be set aside and his services be regularized, however, it was submitted on behalf of the learned counsel for the University that appointment of appellant was made in violation of all norms and rules and staffing patterns and same was in violation of Articles 14 and 16 of the Constitution of India as well as Section 35 of Bihar State Universities Act, 1976. Neither any advertisement nor any selection process was followed in appointment of appellant and same was a back door entry. Appointment was illegal and not irregular as such, benefit of judgement and order passed by the Apex Court cannot be extended to appellant.

The learned Single Judge has observed that petitioner being a daily wager has no right to any post and cannot seek a mandamus for being regularized on the post which has been abolished. It is further observed that since engagement of petitioner was not made after following the mandate of Articles



14 and 16 of Constitution of India, his services cannot be regularized or absorbed nor he can be given credit of earlier experience, however, if any advertisement is issued for direct appointment on Class IV post, appellant will be granted relaxation in age for the period, he had rendered service in the college as daily wager.

After hearing learned counsel for the parties, this Court does not find any error or infirmity in the order passed by the learned Single Judge requiring any interference. Accordingly, the LPA is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

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

