

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1383 of 2014

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Kaaya Devi, W/O Late Jatashankar Mandal, resident of village- Matihani,
P.S- Banmankhi, P.O- Maugampatti, District- Purnea.

.... Petitioner/s

Versus

1. B.N.Mandal University, Laloo Nagar, Madhepura through Its Registrar.
2. The Vice Chancellor, B.N. Mandal University, Laloo Nagar, Madhepura.
3. The Registrar, B.N. Mandal University, Laloo Nagar, Madhepura.
4. The Finance Officer, B.N. Mangal University, Laloo Nagar, Madhepura.
5. The Financial Advisor, B.N. Mandal University, Laloo Nagar, Madhepura.
6. The Pension Officer, B.N. Mandal University, Laloo Nagar, Madhepura
7. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binodanand Mishra, Advocate.
For the Resp. No. 1-6 : Mr. Din Bandhu Mishra, Advocate.
For the State : Mr. Krishna Kumar Singh, AC to GP 17

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

6 06-02-2015 Heard learned counsel for the parties as with regard to

the following prayer made in this writ application, which reads as

follows:

"1.(i) For issuance of an order, direction or writ including writ in the nature of mandamus commanding the respondents to make payment of arrears of family pension to the petitioner with interest at the rate of 18% per annum.

(ii) For issuance of an order, direction or writ including writ in the nature of mandamus commanding the respondents to make payment of family pension month to month regularly without any delay and hindrance.

(iii) For issuance of an order, direction or writ including writ in the nature of mandamus commanding the respondents to make payment of gratuity to the petitioner with interest thereon.

(iv) For issuance of an order, direction or writ including writ in the nature of mandamus commanding the respondents to make payment of leave encashment to the petitioner with interest thereon.

(v) For issuance of an order, direction or writ including writ in the nature of mandamus commanding the respondents to make payment of group insurance to the petitioner with interest thereon.

(vi) For issuance of an order, direction or writ including writ in the nature of mandamus commanding the respondents to make payment of interest @ 18% per annum on the above mentioned retirement benefits on account of the delay caused by the respondents in making payment of the same.

(vii) For issuance of an appropriate declaration holding that the petitioner is entitled for payment of family pension and other retirement benefits after the death of her husband in accordance with the provisions of statute/rules of retirement benefit of the University.

(viii) For issuance of an appropriate declaration holding that delay in the payment of post retirement benefits to the petitioner is solely attributable to the respondents as such they are liable to pay interest on the delayed payment of post retirement benefits to the petitioner."

2. Learned counsel for the petitioner, in support of the aforementioned prayer, has submitted that the husband of the petitioner, namely, late Jatashankar Mandal, was appointed as Laboratory Boy by the Ad-hoc Committee in its meeting held on 20.10.1995 in Parvati Science College, Madhepura and after the college became a constituent unit of L.N.Mithila University (hereinafter referred to as 'the University'), her husband definitely became an employee of the constituent college. He further proceeds that even if the name of the husband of the petitioner may not have been figured in the screening report made by Justice S.C. Agrawal Commission, while examining the case of absorption of teaching and non-teaching employees of the 36 constituent colleges of the fourth phase (1986), the petitioner, after the death of her husband on 19.03.2012, would be entitled for claiming all the retirement benefits of her husband as also family

pension for herself.

3. In this regard, reliance has been placed by the learned counsel for the petitioner on the Government decision, contained in letter no. 25C dated 12.02.1990, to contend that the husband of the petitioner was provisionally absorbed in the service of the University. He has also relied to the Statute of the University which according to him provides that any temporary employee, having served the University for a period of one year, will be entitled for family pension. He has finally also submitted that the respondent no. 4 cannot go into the history of absorption of the husband of the petitioner because by a Government Notification dated 28.02.2006, he has been absorbed in the service of the University.

4. Learned counsel for the respondents, on the other hand, has submitted that after the affiliated college was transferred to the control of L.N.Mithila University, it was discovered that the petitioner could be given the benefit of payment of salary only when the State Government would have released the fund. He, therefore, explains that the provisional absorption order contained in letter No. 25C dated 12.02.1990 issued by the State Government, had never come into effect. He has also submitted that when ultimately, as per the order of the Apex Court, Justice



S.C. Agrawal Commission was constituted to look into the issue of absorption of all teaching and non-teaching employees in the 36 constituent colleges including the college of the husband of the petitioner and a detail post-wise and name-wise list was prepared by Justice Agrawal Commission, the name of the husband of the petitioner did not find place therein and as such the petitioner cannot claim regularisation of his service as a matter of right specially when Justice Agrawal Commission report was approved by the Apex Court in Toto.

5. He has, accordingly, submitted that since the husband of the petitioner not having an approved service and thus, there would be no question of payment of family pension to the widow (the petitioner).

6. In reply, the learned counsel for the petitioner submits that the husband of the petitioner had been paid salary up to October 2006 and, therefore, it cannot be said that the benefit of regularisation of service was not given to the husband of the petitioner.

7. In the considered opinion of this Court, the fate and future of the teaching and non-teaching employees of the 36 constituent colleges would always depend on the outcome of the result of Justice Agrawal Commission for a simple reason that



whatever orders were passed, prior to constitution of the Justice Agrawal Commission, were made subject matter of an appeal by the State of Bihar before the Apex Court and the Apex Court had constituted Justice S.C. Agrawal Commission authorizing it to make its recommendation for absorption/regularisation of service of the teaching and non-teaching employees.

8. Justice Agrawal Commission had gone into each and every individual case of all the constituted colleges and had sent its recommendation to the Apex Court giving post-wise and name wise-list of the employees to be absorbed. For the college of the husband of the petitioner, Justice Agrawal Commission, having found that there were a number of non-teaching employees, it had recommended 12 persons in Class-III post of Head Clerk, Accountant, Correspondence Clerk, Accounts Clerk-cum-Cashier, Counter Clerk, Typist, Store Keeper, Librarian, Sorter, P.T.I.. Similarly, the case of Librarian Incharge was also dealt with and 06 Library In-charge were also recommended for absorption. Justice Agrawal Commission, as per the terms and conditions of the recommendation, having covered the recommended posts up to 30.04.1986, had also separately recommended for absorption of non-teaching employees including 04 posts of Laboratory Incharge. Having done so, Justice Agrawal Commission had also

found that there were 18 sanctioned posts of Peon and 04 sanctioned posts of Laboratory Bearers and for those 18 sanctioned posts and 07 recommended posts of Peon, it has individually named each of the person.

9. In addition to it, the post of Laboratory Bearers was identified in four of the Department, namely, Physics, Chemistry, Botany and Zoology even recommendation was made for those posts. The name of the husband of the petitioner, however, did not figured in any one of them and his claim that he was working on the post of Laboratory Boy in the department of Geography would now raise a question as to whether the post of Laboratory Boy in the department of Geography was ever sanctioned.

10. From the reading of the report of Justice Agrawal Commission, it is found that the post of Laboratory Boy was never ever sanctioned in the department of Geography on or before 30.01.1986 and/or was included in the recommended post. This Court will have no difficulty in holding that the husband of the petitioner was actually working on an unsanctioned post.

11. The fate and future of the persons working on unsanctioned post has been gone into by the Apex Court while considering the report of the Justice Agrawal Commission in its judgment in the case of State of Bihar Vs. Bihar Rajya M.S.E.S.

K.K. Mahasangh reported in 2005(1) PLJR (SC) 464 wherein it has been held that any person, who has been found to be working on the unsanctioned post or post not recommended as on 30.04.1986, will have no claim whatsoever for being absorbed in the service of the University.

12. In this background, the claim of the petitioner that the University had issued an order on 28.02.2006 absorbing the services of the petitioner in the University, has to be only noted for its being rejected because the University could not have gone beyond the order of the Apex Court, which had affirmed the report of the Justice Agrawal Commission. This Court, therefore, comes to the conclusion that the husband of the petitioner was not working on a sanctioned post and therefore merely become he was drawing the salary from the fund either of the college or the University or the State Government, it does not by *ipso facto* make him entitled to say so that he was actually a regular employee of the college.

13. Let it be noted that under Section 4 of the Bihar State Universities Act, 1976 the power of absorption is vested in the University with the prior approval of the State Government but then the question here would be that all these matters were made subject matter of justice Agrawal Commission at the instance of



the Supreme Court. Once, the Supreme Court has ordered not to approve the services of the petitioner due to want of recommendation of Justice Agrawal Commission, the petitioner cannot claim that her the husband to be an absorbed employee of the college and consequently, his entitlement for payment of pension.

14. The moment, this much becomes clear that the petitioner's husband was not entitled for any payment of pension on account of his services being not confirmed, the resultant conclusion will be that even the petitioner will also not be entitled for family pension because it is well settled principles that if a person is not entitled for pension, his wife cannot claim family pension.

15. The reliance placed on the Statute by the learned counsel for the petitioner that a person who was working on a temporary post will also be entitled for payment of pension would not only amount to admitting the fact that there was no sanctioned post for temporary period for the husband of the petitioner but would also create a new class not permitted by the Apex Court in the case of *Mahasangh (supra)*.

16. Here in this case, from the discussions made above and particularly, from reading of Justice Agrawal Commission

Report, it would be more clear that the post of Laboratory Boy in the department of Geography was never sanctioned by the State Government or nor even included in the recommended posts up to 30.04.1986.

17. Thus for the reasons indicated above, this writ application must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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