

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11963 of 2015

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1.Rajeshwar Prasad son of Late Lal Prasad, Resident of Village Kopa Khurd, P.O. + P.S. Naubatpur, District Patna.

2.Udai Dubey son of Late Ramjanam Dubey, resident of village Gangachak, P.O. + P.S. Bikram, District Patna.

3.Sadanand paswan son of late Ramnandan Paswan, resident of Village Koriyawan, P.O. Hansadih, P.S. Masaurhi, District patna.

4.Satrughan Tiwari, son of late Tapeshwar Tiwari, resident of village Gangachak, P.O.+P.S. Bikram, District Patna Bihar.

.... Petitioner/s

Versus

1.The State of Bihar.

2.The Chief Secretary, Government of Bihar, Patna.

3.The Principal Secretary, Higher Education, Government of Bihar, Patna.

4.The Director, Higher Education, Government of Bihar, Patna.

5.The Vice Chancellor, Magadh University, Government of Bihar, Patna.

6.The Registrar, Magadh University, Bodh-Gaya, Government of Bihar, Patna.

7.The Principal B.S. College, Danapur, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Tiwari, Adv

For the University : Mr. Vipin Kumar, Adv

For the State : Mohini Kumari AC to SC-2

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 06-08-2015 Heard learned counsel for the parties.

2. The prayer of the petitioners in this writ application reads as follows:-

“For respondents be directed to reinstate the petitioners on Class-IV, and III post in B.S. College, Danapur similar to the others similarly situated persons namely Smt. Chaittali Sinha, Dilip Kumar Rakesh, Chandeshwar Singh, Suryadeo Singh, Ramakant Prasad Singh their services were terminated by a common order on the similar grounds.

For respondents be directed to pay entire financial benefits to the petitioners admissible to them with effect from date of termination since 1984.”



3. From the reading of the prayer, it becomes evident that the petitioners want their reinstatement as also the consequential financial benefits. They have however forgotten that their services were terminated in the year 1984 and after that they had not only moved this Court but when their writ applications was also dismissed, they had also moved to the Supreme Court and the Supreme Court had also dismissed their appeal affirming the order of the High Court. Since, the petitioners have not produced the order which has been affirmed on 05.01.1988, this Court will have to rely only on the order passed in Civil Appeal Nos. 1535-36 of 1985, relevant portion whereof reads as follows:-

“It is no more in dispute that for a valid appointment under the Act prior sanction of the State Government is necessary under Section 35(2) of the Act. Appellants have not been able to establish that there was such sanction for their appointments. In such circumstances we see no justification to interfere with the order of the High Court.”

4. That in fact was not the end of the matter inasmuch as in view of certain observations given by the Apex Court, in the aforesaid order dated 05.01.1988

directing the University to take action for sanction of post and payment of salary in the following terms:-

“Appellants have as a fact served for some period but some of them have not been paid their salary. Counsel for the University as also the State Government have agree on principle that if for any periods service has been rendered and salary has not been paid the same is payable subject to actual verification and computation. There shall be a direction to the respondents to verify and compute the arrears of salary on the basis that appellants were entitled to payment thereof for the period service was rendered. This may be done within four months from today.

There is material on the recode that claim was made for sanctioning more posts on the basis of approved staffing pattern. As and when such sanction is obtained the appellants who had put in service for some years may be considered for such fresh appointment by overlooking the fact that they have crossed the age limit. This fact has been indicated by the High Court and we reiterate the same. Subject to the above both the appeals are dismissed.”

5. When the University had rejected the claim of the petitioners, they had again moved this Court in C.W.J.C No. 5940 of 1994 and the same was dismissed vide an order dated 01.09.1994, relevant portion whereof reads as follows:-

“In the background of the facts stated above it is not possible for us to issue a positive direction to the respondents to regularize the services of the petitioners. However, we direct that steps be taken so that necessary posts be sanctioned as per the staffing pattern in the College without any further delay.”



7. Let it be noted that this order also became final and has not been interfered. The result, therefore, would be that the petitioners having been denied their reinstatement from 1984 to 1994, despite their filing of two writ applications before this Court and also an appeal before the Supreme Court cannot seek to revive the matter again in the year 2015, by way of making prayer of their reinstatement. Reinstatement in service, in Service Jurisprudence only means taking back a person in service. A question would therefore arise that, can this Court now after the affirmation of the order of termination by the Apex Court can even go into the matter again. The obvious answer will be in negative.

8. In that view of the matter, this writ application is wholly misconceived and is, accordingly, fit to be dismissed.

9. Before this Court would do so, it would however notice the over-emphasized submission of learned counsel for the petitioner that some persons like



the petitioners have been reinstated in service and to that extent he refers to some of the orders passed in the case of Dilip Kumar Rakesh, Suryadeo Singh, Chaitali Sinha, Chandeshwar Singh and Ramakant Prasad Singh.

10. In the considered opinion of this Court, first of all, all these five persons have not been made party to this writ application. Secondly, this Court must also notice the fact that they too have never been reinstated in service inasmuch as they have been sought to be appointed afresh on the pairvai of the high dignatiries including the Chief Minister. Though, this Court can never approve such illegal appointment of those aforesaid five persons but at the same time it also cannot direct the respondents to perpetuate by issuing direction for reinstatement of the petitioners.

11. This Court in fact cannot examine the issue of fresh appointment of five persons which have not been challenged by the petitioners nor they have been made party to this writ application. All that this Court in



absence of five persons can say is that, if the petitioners approach the authority questioning the appointment of abovenamed five persons, the competent authority of the University may consider the same in accordance with law. No writ however can be issued by this Court for perpetuating the illegality, which seems to have been done, in the appointment of more than five persons. Thus, if some illegality has been committed in respect of those five persons, no right can accrue to the petitioners to seek a direction from this Court for perpetuating the illegality. Reference in this connection may be usefully made to the judgment of the Apex Court in the case of **State of Bihar Vs. Upendra Narayan Singh** reported in **2009(5) SCC 65**, wherein, dealing with this very aspect it was held as follows:-

"By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing wrong orders- Chandigarh Admn. v. Jagjit Singh, reported in (1995) 1 SCC 745, Jaipur Development Authority v. Daulat Mal Jain, reported in (1997) 1 SCC 35, Union of

India v. J.V. Subhaiah reported in (1996) 2 SCC 258, Gursharan Singh v. NDMC reported in (1996) 2 SCC 459, State of Haryana v. Ram Kumar Mann reported in (1997) 3 SCC 321, Faridabad CT Scan Centre v. D.G. Health Services, reported in (1997) 7 SCC 752, Style (Dress Land) v. UT, Chandigarh reported in (1999) 7 SCC 89, State of Bihar v. Kameshwar Prasad Singh, reported in (2000) 9 SCC 94, Union of India v. International Trading Co. reported in (2003) 5 SCC 437 and Directorate of Film Festivals v. Gaurav Ashwin Jain, reported in (2007) 4 SCC 737.

(underlining for emphasis)

12. That being so, this writ application also must fail and is, accordingly, dismissed.

13. Though this Court was inclined to award heavy cost against the petitioners for filing this wholly frivolous writ petition but it would bestow compassion to them keeping in view that they are not only the unemployed but became hopeful to get back in service on account of illegal appointment of those five persons.

(Mihir Kumar Jha, J)

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