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IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18150 of 2010

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Nayan Kumar Munshi S/O Late Neel Bihari Munshi R/O Mohalla- Nehru
Chowk, P.O. & P.S.- Banmakhi, Distt.- Purnea

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary Human Resource
Development Department, Bihar, Patna
2. Bhupendra Narayan Mandal University Laloo Nagar Madhepura,
Through The Vice Chancellor
3. The Registrar, Bhupendra Narayan Mandal University, Laloonagar,
Madhepura
4. The Principal, Gorelal Mehta College, Banmakhi, Distt.- Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Awadhesh Kumar
		Mr. Rakesh Kumar Singh
For the B.N.Mandal University		Mr. Manish Dhari Singh
For the State		Mr. Deepak Kuma, A.C. to G.A.10

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

6 13-01-2015 Heard Mr. Awadhesh Kumar learned counsel for the

petitioner and Mr. Manish Dhari Singh who has appeared on

behalf of the Respondent B.N. Mandal University ((for short ‘the

University’).

A supplementary affidavit has been filed on behalf of
the petitioner. A counter affidavit has been filed on behalf of the
Respondent University. The petitioner has filed rejoinder thereto.

The present writ application under Articles 226 of the
Constitution of India has been filed to quash the order dated

12.05.2010 (Annexure-8) passed by the Registrar of the Respondent University in the light of the order dated 09.03.2010 passed by this Court in CWJC No. 10578 of 2001.

According to the petitioner, he was appointed on daily wage basis as Lab in-charge in the Department of Psychology in Gore Lal Mehta College, Banmakhi then falling within the jurisdiction of L.N.M. University, Darbhanga by the Principal of the College. Such engagement was made on daily wage/muster roll basis but after following a kind of selection process adopted therefor inasmuch as applications were invited by pasting the notice on the notice-board of the College whereafter interview was conducted of the applicants by a Selection Committee constituted by the Principal of the College. Relevant facts in this regard have been stated in the supplementary affidavit wherefrom it appears that a notice dated 12.05.1989 was issued under the signature of Shri Mahendra Narayan Yadav the then Principal of the college inviting applications from the applicants for engagement on Class III and Class IV posts on daily wage basis. The appointment letter dated 17.05.1989 has been enclosed as Annexure-14 wherefrom it appears that he was engaged as Lab In-charge on daily wage basis with a condition that payment of wages shall be made after receipt of the fund/grant by the



College. The petitioner claims to have discharged the duties of the of the post on daily wage basis. In the light of an order passed by the University payment of wages to the petitioner was stopped. In such circumstances, he filed a writ petition vide CWJC No. 7584 of 1998 seeking a direction for payment of wages payment whereof was stopped. In the meantime, an order in black and white was also issued by the University stopping the petitioner from discharging his duties. Those orders were challenged by filing interlocutory application(s). This Court by order dated 13.11.1998 while disposing of the interlocutory application directed the Respondent University to pay the salary/wages of the of the petitioner for the post he worked upto March, 1998. Subsequently, the writ petition came to be disposed of by order dated 28.01.2000 (Annexure-3) wherein noticing the grievance of the petitioner that he was engaged on daily wage basis and performed the duty of the Lab In-charge since 17th May, 1989 this Court directed for payment of the salary/wages for the period he actually worked. Considering the stand taken in the counter affidavit challenging the legality of his engagement/appointment this Court further observed that if the State Government has directed to disengage the daily wage employees it was within the purview of the University to



disengage such daily wage employees including the petitioner. Subsequently, by order dated 06.02.2001 in the light of the direction issued by the respondent, the Principal of the college disengaged the services of the petitioner with effect from 01.05.1998. This gave an occasion to the petitioner to file another writ petition in this Court vide CWJC No. 10578 of 2001. After hearing both sides and considering the statements made in the counter affidavit disputing the status of the petitioner as having been appointed against a sanctioned post by the competent authority after following the procedure laid down for such appointment on Class III post this Court directed for consideration of his case in the light of the judgment passed by the Apex Court in the case of **State of Karnataka vs. Uma Devi (2006 (2) PLJR 363)**. Such direction was issued considering the assertion of the petitioner that he continued on the post in question for more than ten years without any judicial intervention and the appointment was made against the sanctioned post. In the light of the said order the petitioner made a representation dated 22.03.2010 (Annexure-7) which came to be disposed of by order dated 12.05.2010 (Annexure-8) rejecting the same. The said order has been impugned in this case. It is considered apposite to extract hereinbelow relevant part of the said order for better

appreciation of the submission of the parties:-

“.....However, your case was also considered in the light of the observations made in the order dated 09.03.10 as well as Para No.44 of the order dated 10.04.2006 {2006(2) PLR} passed by the Hon'ble Apex Court in the case of the State of Karnataka & Ors. Vs. Uma Devi (3) & Ors. in addition on merit. As per the observations made in the said Para No.44 any irregular appointment against sanctioned post- not illegal appointment, and continued for ten years or more were to be considered on merit. Emphasis was added for direct recruitment. Para No.15 of the said judgment too is referred in Para No.44. Paragraph No.15 says that the constitutional scheme of public employment in appropriate cases would have only right to regularize an appointment made by following the due procedure. An appointment made in clear violation of the constitutional scheme and the statutory rules can not be treated as permanent or can not be directed to be treated as permanent. As found and established above, your appointment as daily wager has been found not only irregular, rather illegal too. Your appointment was made on managed, manipulated and forged way/manner and



without post. You did not complete ten years of service from 18.05.89 to 30.04.98- the total working period. For regular appointments the vacant posts of Non-teaching staff have already been advertised in the year 2002, 2005 and again in 2009 and there clear mention of weightage for the daily wagers/casual workers/contractual workers as well as experienced persons. Thus, in no way, your case is covered with the said judgment dated 10.04.2006 of the Hon'ble Apex Court.

On the face of the above facts, on consideration on merit, it is crystal clear that your such appointment was irregular and illegal, fit for termination from service and accordingly was rightly terminated by the Principal vide letter dated 25.04.98, issued as per the order of the University and under direction of the State Govt. as well as in the light of the statutory provision. University letter No.4135-41 dated 21.09.92 and No.4464-65 dated 02.10.92 stand cancelled. Your prayers to quash the letter No.28/2001 dated 06.02.01 and for regularization of service do not have legal ground and are accordingly rejected. Further, you remained working in the said college only from 18.05.89 to 30.04.98 and payment was

already made in full for the entire working period, hence your claim for payment till 06.02.01 and such others are not tenable in the eye of law and are rejected.....” (Page 48 and 49 of the brief)

The contention of the petitioner is that the impugned order wrongly records that he has not continued on the said post for more than ten years. It has further been contended that the post held by him would fall within the staffing pattern and as such it shall be deemed to have been sanctioned by the State Government. He relies in this regard on annexure-10 of the writ petition which is a communication to the government by the University wherein it has been noted that few posts which would fall within the staffing pattern was earlier not made available to the government which should also be considered as the post(s) falling within the staffing pattern. The post of Lab In-charge Psychology was included as one of the such post(s). Mr. Kumar would further urge that the Principal had requisite authority to make appointment on Class III post. In support of the aforesaid contention he would rely on an unreported order of this Court passed in LPA No.901 of 2008 (Nand Lal Mandal vs. The Tilkamanjhi Bhagalpur University & Ors.). It has next been urged



that this Court while dealing with the earlier writ petition filed by the petitioner has found that his initial engagement on daily wage basis in the College in question was made after undergoing the process of selection. His selection on the post was albeit on daily wage basis but after adopting a selection process and therefore not illegal.

A counter affidavit has been filed on behalf of the University. In paragraph 8 thereof it has been stated that as per the writ petition and the records available with the University such engagement of the petitioner and another on Class III and IV posts was/were made after inviting an application for engagement by issuing a notice on the notice-board of the College. The Principal of the college is not the competent authority for making any such appointment. In the matter of engagement of the petitioner whole lot of procedures were grossly undermined in order to give undue benefit/privilege to the petitioner. When the University noticed continuance of such large number of employees on daily wage basis contrary to the direction of the State Government contained in letter dated 10.05.1991 a direction was issued to immediately disengage them from service/employment vide letter no.50A//98 dated 25.04.1998 and the payment of salary/wages to such employees including the

petitioner was stopped. He was not allowed to discharge the duties of the post thereafter. It is better to extract hereinbelow the averment made in paragraph 9 and 10 of the counter affidavit:-

“9. That in the order dated 06.12.1989 passed by the Hon’ble Supreme Court in S.L.P. (Civil) No.11078/1989 with others matter, it was held that the principal is not empowered to appoint even a 4th grade employee.

10. That it is submitted that Circular contained in State Govt. Letter No.989 (189) dated 10.05.1991 clearly provides that the cases of only those daily wage earners were to be considered for regularization with due process and procedure who were engaged/appointed prior to 10.05.86. Services of the daily wage earners appointed after 10.05.1986 were to be terminated from such engagement. But the then Principal in collusion with the petitioner and in the personal interest of his daughter ignored such circular/directive of the State Govt. to facilitate the petitioner as well as his kith and keen. Even, the then University officials did not take such directive into consideration in course of issuance of letters dated 21.09.92 to 02.10.92. Thus, in the light of the said circular, service of the petitioner ought to have been terminated. By ignoring and disobeying the



said circular the petitioner along with such other irregularly appointed persons were left to continue irregularly and illegally. Further, under direction from the State Govt. and with reference to University letter No.50 A/98 dated 25.04.98 payment to the petitioner was stopped i.e. he was prohibited to discharge work in the college. Thus, he actually remained working only up to April, 1998 and formal order of termination was issued on 06.02.2001 in continuation of the said earlier dated 25.04.1998 letter and there is clear mention of the letter dated 25.04.98 in the letter dated 06.02.2001.”

This Court in order dated 09.03.2010 passed on the second writ petition filed by the petitioner (Annexure-6) noticing the rival contention of the parties and considering the direction made by the Apex Court in the case of **Uma Devi** (Supra) permitted the petitioner to raise a claim in this regard before the appropriate authority which was directed to be considered in accordance with law.

The respondent- University in the light of the said order of this Court considered the representation of the petitioner and rejected the same by the impugned order. The counsel for the University has further brought to the notice of the Court that in



the meanwhile at least three selection processes was/were undergone by the University after advertisement granting weightage to such employees who had continued on daily wage basis on such post for certain number of years. It does not appear from the pleadings on record that any such opportunity was availed by the petitioner.

Having regard to the direction issued on the writ petition filed by the petitioner vide CWJC No. 10578 of 2001 (Annexure-6), this Court would proceed to examine the correctness or otherwise of the order impugned keeping in focus the direction contained therein since the said order has attained finality. It appears from perusal of the order dated 28.01.2000 (Annexure-3) passed on the first writ petition preferred by the petitioner that this Court directed for payment of wages/salary to the petitioner for the period he actually performed the duty. The impugned order records that the petitioner was stopped from discharging the duty of the post by order dated 25.04.1998 (Annexure-4 & 4/1). The respondent on going through the relevant records found that the petitioner was engaged by the Principal of the said college in a wholly fraudulent manner inasmuch as he was arbitrarily allowed salary of the higher post (admissible to the confirmed employee) even without getting any



approval from the competent authority. The manner in which the engagement of the petitioner was made on daily wage basis has been taken note of by the respondent in the impugned order. The claim of the petitioner to have discharged the duty on the post for more than ten years was also considered and not found acceptable in view of diverse orders which were passed by the authorities as also the relevant documents which could show the continued engagement of the petitioner after 25.04.1998. This Court, at this stage, would notice the submission of the petitioner relying on annexure-16 of the supplementary affidavit which is the duty chart dated 06.10.2005. It has been argued that the petitioner continued in service even after the order of disengagement which would be evident therefrom. In my view, if the services of the petitioner were disengaged by the University being the competent authority his continued engagement in defiance of the order would not enure to the benefit of the petitioner. This only indicated that the Principal in complete defiance of the order of the government and the University allowed him to work. The University would therefore not be bound by such fraudulent act. The impugned order on perusal of the relevant documents clearly records that the petitioner continued to discharge the duty between the period 17.05.1989 to



25.04.1998 for which wages have been paid to the petitioner. That apart, from the pleadings on record it is evident that the petitioner was engaged under the order of the Principal of the College. The competence of the Principal to engage on Class III and Class IV posts has seriously been disputed by the respondents relying on the provision contained in Section 10(6) of the Bihar Universities Act, 1976. Per contra, the petitioner has relied on an unreported order passed by this Court in LPA No. 901 of 2008. On perusal thereof it appears that the same was passed in the peculiar facts of the case wherein this Court noticed that such promotion to Class III post was granted to the petitioner by the Principal during the period when the Principal was delegated the power of appointment of 3rd and 4th grade employees under the order of the Vice Chancellor. The notification issued in this regard was also placed on the record. In the case at hand there is neither such pleading nor the document in support thereof to show that any such delegation was ever made by the Vice Chancellor of the University in favour of the Principal when the engagement order was passed.

That being the factual position evidencing from the record this Court is unable to find any patent illegality in the consideration of the matter by the respondents in the light of the

order passed on the writ petition as contained in annexure-8 rejecting the claim of the petitioner for one-time regularization on the post in question.

The application is devoid of merit. It is dismissed accordingly.

No order as to costs.

(Kishore Kumar Mandal, J)

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