

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17615 of 2010

1. Nirmala Devi W/O Late Dr. Hem Chandra Kumar At & P.O.- Tuniyahi Via
Madhepura, Distt.- Madhepura

.... Petitioner/s

Versus

1. B.N. Mandal University, Lalu Nagar, Madhepura, Through Its Registrar
2. Vice Chancellor, B.N. Mandal University, Lalu Nagar, Madhepura
3. Registrar, B.N. Mandal University, Lalu Nagar, Madhepura
4. State Of Bihar Through The Principal Secretary Department Of Human
Resources, Government Of Bihar, Patna

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 17635 of 2010

1. Dr. Surya Narayan Yadav S/O Late Babujee Yadav R/O Vill.- Gorpar, P.O.-
Uda-Kishunganj, P.S.-Behariganj, Distt.- Madhepura, Presently Posted As Head Of
The Department And Reader In the Department Of Philosophy, Parwati Science
College, Kirti Nagar, Madhepura
2. Md. Quazi Moizur Rahman S/O Late Quazi Abdul Kasim Ward No.10, Masjid
Chowk, P.O. & Distt.- Madhepura, Presently Posted As Head Of The Department
and Reader In Department Of Political Science, Parwati Science College, Kirti
Nagar, Madhepura

.... Petitioner/s

Versus

1. B.N. Mandal University, Lalu Nagar, Madhepura, Through Its Registrar
2. Vice Chancellor, B.N. Mandal University, Lalu Nagar, Madhepura
3. Registrar, B.N. Mandal University, Lalu Nagar, Madhepura
4. State Of Bihar Through The Principal Secretary Department Of Human
Resources, Government Of Bihar, Patna

.... Respondent/s

Appearance :

(In CWJC No.17615 of 2010)

For the Petitioner/s : Mr. Binodanand Mishra, Advocate
For the University : Mr. Shashi Bhushan Singh, Advocate
For the State : Mr. Narendra Kumar, AC to SC-22

(In CWJC No.17635 of 2010)

For the Petitioner/s : Mr. Binodanand Mishra, Advocate.
For the University : Mr. Mithilesh Kumar Rai, Advocate
For the State : Mrs. Neelam Prasad, AC to GP-25

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 16-01-2015

Heard the parties.

Both the writ applications raise common issues and as such they are heard together and are being disposed of with the consent of the parties. The facts being identical, this Court would notice them from CWJC No. 17615 of 2010.

The petitioner is the widow of the employee and has filed the present writ application calling in question the order dated 04.11.2009 passed by the Registrar of the respondent-University under orders of the Vice Chancellor of the respondent- University whereby the husband of the petitioner as well as the writ petitioners of CWJC No. 17635 of 2010 were granted time bound promotion to the post of Reader w.e.f. 03.08.1993. The petitioner further pray for a direction commanding the respondents to grant her husband time bound promotion to the post of Reader w.e.f. 01.06.1989 with consequential benefits. During pendency of this application the representation filed by the husband of the petitioner came to be disposed of by the Chancellor of the University vide order dated 29.04.2011 (Annexure-C to the counter affidavit of the respondent-University). The same was challenged by the petitioner by filing I.A. No. 197 of 2015.

Parwati Science College, Madhepura (for short 'the



College') was established in the year 1978. The husband of the petitioner was appointed as Lecturer in the Department of Botany against the first post on 10.08.1978. He started functioning as such since then. By letter dated 09.06.1980 the College was granted affiliation up to Intermediate level in science as well as different arts subject including Botany w.e.f. the session 1979-80 (Annexure-1) passed by the Government in the Department of Education. By yet another order dated 11.10.1980, the State Government sanctioned/approved the creation of the first post of Lecturer in different subjects including the Botany. It is the contention of the petitioner that the then College Service Commission, Bihar (for short 'the Commission') had granted concurrence to the temporary appointment of the husband of the petitioner on 12.11.1980. On 24.02.1982 the College was granted affiliation upto degree level w.e.f. the academic sessions 1979-80 in different Arts and science subjects including Botany. The said order has been enclosed as Annexure-3. In such circumstances, the husband of the petitioner claimed to be entitled to time bound promotion w.e.f. 01.06.1989. The University, however, granted him time bound promotion w.e.f. 03.08.1993. The said order passed by the University was, however, modified by another notification of the University dated 18.05.2011 whereby the time bound promotion granted to the husband of the



petitioner was shifted from 03.08.1993 to 11.10.1990. This is because of the reason that the State Government had sanctioned/approved the creation of first post of Lecturer in different subjects vide order dated 11.10.1980. The husband of the petitioner, in such circumstances, filed the writ application seeking the aforesaid relief as noticed above. The representation of the husband of the petitioner before the Chancellor came to be disposed of during the pendency of the application and hence the same has been challenged by filing the Interlocutory Application.

Mr. Mishra counsel for the petitioners has submitted indisputably the husband of the petitioner was holding the first post in the Department of Botany for which concurrence was granted by the Commission. No sooner the College was granted affiliation by the Government from the Sessions 1979-80 the first post shall be deemed to have been approved / sanctioned by the State Government. The subsequent order of the Government dated 11.10.1980 sanctioning/approving creation of first post vide Annexure-2 shall be of no consequence. He has relied in this regard on an unreported order passed by this Court in the case of Babu Saheb Jha & Ors. Vs. The state of Bihar & Ors. (CWJC No. 3017 of 2006) taking into consideration the ratio laid down by the Full Bench of this Court since reported in 1997(1) BLJR 625 (Braj Kishore Singh & Ors. Vs.

State of Bihar & Ors).

A counter affidavit has been filed on behalf of the University . Counsel for the University supporting the impugned order has submitted that the post which was held by the husband of the petitioner was sanctioned by the Government vide letter dated 11.10.1980 (Annexure-2) and as such the respondent-University by the subsequent order (Annexure B to the counter affidavit) modified the previous order shifting the date of the time bound promotion in the case of the husband of the petitioner from 03.08.1993 to 11.10.1990. The reasons behind this order is that the post which was held by the husband of the petitioner was created by the government only on 11.10.1980. He has, however, not disputed the fact that the husband of the petitioner held the first post in the said department.

On a consideration of the rival submissions, it appears the bone of contention between the parties is whether the husband of the petitioner would be entitled to count his service w.e.f. the date of grant of affiliation to the College in- question or from the date when the post held by the husband of the petitioner was actually sanctioned/ approved by the Government. The aforesaid issue was specifically gone into and dealt with by this Court in the case of Babu Saheb Jha and others (supra) when in para 9 thereof it was held as under:-



“9. The petitioners admittedly are holders of the first post in their respective departments of their College and for them the Government had granted the affiliation on 19th February, 1983 by which affiliation was given to the College of the petitioners with effect from 1980-1981 session upto B.A. level. The effect of this affiliation in terms of the order of the State Government dated 19th February, 1983 was that the first post of the Lecturers in these colleges were deemed to have been created and sanctioned from 1980-1981 session and that is how this issue has been decided by the Full Bench of this Court in the case of Braj Kishore Singh & ors. vs. the State of Bihar & ors., reported in 1997(1) PLJR 509.”

As evident from the extract of the judgment hereinabove the said judgment was relied on the Full Bench judgment of this Court in the case of Braj Kishore Singh & Ors. (supra) wherein this Court noticed as under in para 11:-

“11. If the aforesaid provisions are literally construed it would virtually mean that no college can be established except by the State Government or linguistic/religious minority. As per the provisions of Section 21 of the Universities Act, a College can be affiliated only with the approval of the State Government and before granting such approval, the State Government has to consider, inter alia, “ the viability of the academic standard and all other conditions which are likely to have observe effect on the interests of students admitted to such a College. “ Section 21, therefore, contemplates the existence of a full-fledged institution with adequate provision. It would be a tautology to say that an educational institution cannot exist without students. If the existence of students is a must, so is the existence of teachers, for the students cannot



prosecute their studies in the institutions without teachers. And no office can run without class III/IV employees. If the existence of adequate infrastructure, inclusive of the provisions for teachers and non-teaching staff, is a condition precedent for grant of approval in the matter of affiliation and without affiliation the College cannot claim the privileges of University under the provisions of the Universities Act or the statutes framed thereunder, it is obvious that literal interpretation and a steadfast insistence on prior approval of the State Government in the matter of creation of posts and appointment may lead to any absurd situation.”

On perusal of the impugned order Annexure-9 as well as the order passed by the Chancellor (Annexure-C to the counter affidavit) it does not appear that the aforesaid legal position laid down by this Court was taken into note. The University proceeded on the assumption that the post held by the husband of the petitioner was sanctioned w.e.f. 11.10.1980. As noticed above, this Court in the case of Braj Kishore (supra) found that no college can be granted affiliation without its actual existence and/or functioning. If there is assumption of functioning of the College then the same presupposes presence of the students on the rolls of the College and some teaching and non teaching staff to take care of the students. On this presumption which is not abstract the Full Bench in para 11 found and held as noticed hereinabove. Relying on the said ratio and precisely in the identical facts, this Court in the case of Babu Saheb

Jha(supra) allowed the writ petition directing the absorption of the petitioners in the service of the University. The reason which has been assigned in the order passed by the respondent- University as contained in Annexure-B is therefore not sustainable in law. Further, from the order passed by the Chancellor it does not appear that any reason has been assigned therein. The order is, therefore completely non speaking.

Having regard to the aforesaid facts reflecting from the records and after considering the submissions of the parties as noted above, this Court is satisfied that the petitioner is entitled to the relief(s) as prayed for in this writ application. Accordingly, the order contained in Annexure-9 as well as Annexure-C to the counter affidavit are quashed and set aside. The respondents are directed to pass a fresh order granting the petitioners the benefit of time bound promotion from the date(s) when the College in- question was first granted the affiliation i.e. from sessions 1979-1980. In other words, the husband of the petitioner would be entitled to time bound promotion w.e.f. 1.6.1989 and not from 11.10.1990 i.e. the date on which the State Government sanctioned/created the post.

(Kishore Kumar Mandal, J)

Shyam/-

U			
---	--	--	--