

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1489 of 2013

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Indu Kumari W/O Ram Milan Rai R/O Village- Rajwara, P.S.- Barauni,
District- Begusarai Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary Human Resources Development Department,
Govt. Of Bihar, Patna
3. The Vice-Chancellor, L.N. Mithila University, Darbhanga
4. The Registrar, L.N. Mithila University, Darbhanga
5. The Finance Officer, L.N. Mithila University, Darbhanga
6. The Principal, A.P.S.M. College, Barauni, District- Begusarai
..... Respondents

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Appearance :

For the Petitioner : Mr. Shashi Bhushan Singh, Advocate
For the Respondents : Mrs. Binita Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA
PRATAP SINGH**
ORAL JUDGEMENT

13 07-12-2015 The petitioner seeks quashing of letter dated 27.4.2012,

whereby her claim for regularization has been rejected. She

seeks issuance of appropriate direction to the respondents to

regularize her services.

2. Before I consider the grounds on which the reliefs
sought by the petitioner is founded, it would be relevant to
notice the facts of the case in brief.

3. The petitioner was initially engaged against vacant
post of store keeper in A.P.S.M. College, Barauni vide letter
dated 12.02.1992 of the then Principal of the college with the
condition that the remuneration would be paid after due
approval of her appointment by the University. In the year



1996, an advertisement was issued by the University for filling up various posts in different colleges including the petitioner's college. Pursuant to the advertisement, employees who were engaged on daily wages, appeared in the interview. The name of the petitioner did not figure amongst the list of candidates recommended for regularization. Being aggrieved, she filed a representation to the University for regularization of her services. In response to the petitioner's letter, the University sought detailed informations regarding her appointment/engagement from the college vide letter dated 27.6.2006. For the reasons not known, the informations regarding petitioner's appointment were furnished to the University only in the year 2010 vide letter dated 24.7.2006 of the college. On consideration of the informations received from the college, the University vide letter dated 22.11.2010 directed that petitioner will discharge her duty as store keeper and would be paid on honorarium basis till further orders as an outsource candidate. The petitioner protested against putting her under outsourced category and payment on honorarium basis vide representation, dated 8.12.2010. In the meantime, the principal of the college vide his letter dated 23.12.2010, made request to the University to provide necessary fund to



make payment to the petitioner. In response to the letter, dated 23.12.2010 of the principal of the college, the University made available a sum of Rs. 7600 for payment of honorarium to the petitioner vide letter dated 13.7.2007. Subsequently, the University vide letter dated 26.7.2007 addressed to the principal of the college approved the appointment of the petitioner on payment of take home salary of Rs. 5074/- through outsourcing.

4. The petitioner filed C.W.J.C.No. 16174 of 2011 which was disposed of on 20.9.2011 giving her liberty to file a fresh representation before the Registrar of the University, who would dispose of the same within a period of four weeks in terms of directions of this Court. The petitioner filed her representation on 26.9.2011, which is annexed as Annexure 11. The Registrar, L.N. Mithila University, not being satisfied with her representation, dismissed the same vide his letter, dated 27.4.2012, which is in challenge in this writ petition.

5. The petitioner submits that the University has rejected her representation for regularization only on the ground that she was appointed by the Principal of the college, who was not competent to make appointment of store keeper, whereas services of many other class III employees, similarly



appointed, by the principal of this college was regularized. He next submits that in any view of the matter respondents ought not to have rejected her application for regularization on the ground that she was not appointed by a competent authority after 20 years of service. In support of her submissions, the petitioner has relied upon a recent decision of Hon'ble Apex Court rendered in case of Amarkant Rai Vs. State of Bihar and others, reported in (2015) 8 SCC 265, paragraph 8 which reads as follows:-

“Insofar as contention of the respondent that the appointment of the appellant was made by the Principal who is not a competent authority to make such appointment and is in violation of the Bihar State Universities Act and hence the appointment is illegal appointment, it is pertinent to note that the appointment of the appellant as night guard was done out of necessity and concern for the College. As noticed earlier, the Principal of the College vide letters dated 11.3.1988, 7.10.1993, 8.1.2002 and 12.7.2004 recommended the case of the appellant for regularization on the post of night guard and the University was thus well acquainted with the appointment of the appellant by the then Principal even though the Principal was not a competent authority to make such appointments and thus the appointment of the appellant and other employees was brought to the notice of the University in 1988. In spite of that, the process for termination was initiated only in the year 2001 and the appellant was reinstated w.e.f. 3.1.2002 and was removed from services finally in the year 2007. As rightly contended by the learned counsel for the appellant, for a considerable time, the University never raised the issue that the appointment of the appellant by the Principal is ultra vires the rules of the BSU Act. Having regard to the various communications between the Principal and the University and also the educational authorities and the

facts of the case, in our view, the appointment of the appellant cannot be termed to be illegal, but it can only be termed as irregular.”

6. The petitioner controverts the stand of University that she did not appear in the interview in the year 1997 pursuant to interview call made in the year 1996.

7. On the other hand, Mr. Ajay Bihari Sinha, learned counsel appearing for the University submits that the petitioner's case is different than that of other employees whose services have been regularized. He submits that the petitioner did not appear for the interview in the year 1996 and as such her case for regularization has been considered favourably. He next submits that the impugned order rejecting her application for regularization was passed on 27.4.2012, whereas petitioner has relied upon a subsequent decision reported three years thereafter. He further submits that paragraph 8 of the judgment rendered in case of Amar Kant Rai, would not be applicable as the facts are different.

8. I have heard learned counsel for the parties.

9. The sheet anchor of respondents' case is that the petitioner's representation was rejected on the ground that she was appointed by the Principal of the College who was not competent to appoint, as it was the Vice Chancellor who was

vested with power to make appointment to sanctioned posts of the University, not being teachers and officers of the University.

The concluding portion of the order is quoted herein below:-

“Hence appointment claimed by the petitioner made in the college by the principal in the year 1992 has no locus standi and it cannot be termed “legal” or “Valid” because the Principal of the college was not empowered by the Act at any point of time to appoint a not-teaching employee. Hence, the said appointment cannot be termed as “irregular” rather it is “illegal”. It was “illegal” abinitio since no competent authority empowered to do so has appointed the petitioner or approved her appointment claimed to be made in the year 1992.

However, approval of the University on the services of the petitioner made available by the Service Provider Company in the year 2010 in the withdrawn vide memo no. 10142/11 dated. 06.07.22 was subsequently withdrawn vide memo no. 10977-11199/11 dated 16.07.11 within a couple of days. Service of an employee on out-sourced basis cannot be claimed in an institution since such servants are the employees of the “Service Provider Company”.

Hence, the claims made by the petitioner is not maintainable and accordingly are rejected.”

10. On the other hand, the petitioner has relied upon the decision of the Hon'ble Apex Court in case of Amarkant Rai Vs. State of Bihar and others, reported in (2015) 8 SCC 265, paragraph 8.

11. The petitioner is claiming relief, drawing parity with the case of Amarkant Rai (Supra). The aforesaid case too arose from order of the Lalit Narain Mishra University, refusing



to regularize the appointment of Amarkant Rai against Class IV post of night guard. The appellant before the Hon'ble Apex Court too was appointed by the Principal of the college who was not competent to appoint class IV employee in view of section 10(6) of the Bihar University Act, which authorizes a Vice Chancellor to make appointment on vacant post of Class IV and Class III post of ministerial staff and employees, other than officials and teachers. Hon'ble Apex Court relying upon paragraph 53 of the judgment of Uma Devi case, reported in 2006(4) SCC page 1 and paragraph 7 of State of Karnataka Vs. ML Keshri, reported in 2010(9) SCC page 247, observed that the appellant Amarkant Rai was appointed against vacant post on which he had continued for 29 years and it would be unfair to disengage her and as such was entitled to regularization. Hon'ble Apex Court as such directed to notionally regularize the services of the appellant with retrospective date without monetary benefit.

12. The case of the petitioner is that she too has served for about 19 to 20 years and entitled to regularization on basis of judgment of the Hon'ble Apex Court in case of Amarkant Rai Vs. State of Bihar and others, reported in (2015) 8 SCC 265, paragraph 8. However, as there is some factual

dispute, I find it appropriate to remand the matter before respondent no.4 for fresh consideration of petitioner's case in light of judgment of the Hon'ble Apex Court rendered in case of Amarkant Rai.

13. The writ petition is thus disposed of.

(Samarendra Pratap Singh, J)

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