

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15363 of 2010

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1. Anil Kumar Anal S/O Late Ram Rup Pandit R/O Vill.- Dehgana, P.O. & P.S.- Gogri, Distt.- Khagaria, At Present Residing In The House Of Smt. Satyabhama Devi, Near Abhyas Middle School, Ward No.-20, P.O.+P.S.- Madhepura, Town & Distt.- Madhepura

.... Petitioner/s

Versus

1. The State Of Bihar Through The Secretary Department Of Higher Education, Government Of Bihar, Patna
2. The Bhupendra Narain Mandal University Laloo Nagar, Madhepura Through The Vice Chancellor
3. The Vice Chancellor, B.N. Mandal University, Madhepura
4. The Registrar, B.N. Mandal University, Madhepura
5. The Controller Of Examination, B.N. Mandal University, Madhepura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Mohan

For the Respondent/s : Mr (Sc24)

Mr. Mithilesh Kumar Rai

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL ORDER

9 12-01-2015 Heard Mr. Siyaram Shahi for the petitioner, Mr. Mithilesh Kumar Rai for the University and Counsel for the State.

A counter affidavit has been filed on behalf of the University.

The petitioner had earlier moved this Court for regularization of his services vide C.W.J.C. No. 7990 of 2002. Several such writ petitions claiming regularization came to be disposed of by a common order dated 13.04.2007 (Annexure-9) wherein the following direction was issued:-

“It is in these contexts, as well as, in the backdrop of the submissions raised on behalf of the counsels, in general, and particularly the counsel for the respondents, this Court is inclined to dispose of this group of petitions by giving the following directions to the respondents:-



(1) The Vice Chancellor of the concerned Universities, shall constitute a Committee of three members within a period of two months from the date of receipt of the writ of this Court, to examine the manner and mode and the type of appointment and whether such appointments are in consonance with the Recruitment Rules on regular posts, or irregularly made or illegally made or not.

(2) Such Committee shall consider the individual case after giving an opportunity of hearing to the affected employees, the procedure for which the Committee will evolve its own modality and modus operandi so as to reach to a conclusion as to the nature of the appointments of the employees covered in this group of petitions and to ascertain whether their appointments are regular, irregular or illegal and whether they are falling within the ambit of the observations made in paragraph 53 of the decision in Secretary, State of Karnataka and others Vs. Uma Devi (3) (supra).

(3) The Committee shall, undoubtedly, take a decision in the light of the law laid down by the Constitution Bench of the Hon'ble Apex Court in "Secretary, State of Karnataka" (Supra) and in particular in the light of the observations which are quoted herein above.

(4) It shall, also, be remembered that the exercise of regularisation, if required, shall be a one time measure.

(5) The exercise by the Committee is directed to be completed within six weeks after the creation thereof and in the event of any necessity it will be open for the concerned party to seek extension of time by taking leave from this Court.

(6) The contention that in some of the cases out of the present group in earlier round of litigation finality has been attained and achieved shall, also, be examined by the Committee.

(7) Until the Committee concludes its process and exercise directed herein above, the status quo in respect of the petitioners obtainable as on today, is directed to be maintained."

In the light of the said direction, a three men



Committee was constituted by the University to examine the case of the petitioner. The Committee, on going through the records placed by the University as well as the petitioner, found that he was not appointed on the post of Clerk in the Examination Department of the University against a sanctioned post after adopting procedure consistent with the relevant Statute/Act as well as Articles 14 and 16 of the Constitution of India. The Committee also noted that he had not worked on the said post even in the status of a temporary/daily wage employee continuously. His case for regularization was not recommended. However, the Committee found that since the petitioner had discharged intermittently on the post he was initially engaged, he would be entitled to some weightage as and when the process of appointment is undertaken by the University. In the light of the said recommendation of the report, the Registrar of the respondent University passed the order dated 06.02.2008 (Annexure-12) rejecting his claim for regularization. Nearly two years thereafter, the present writ application has been filed for quashing the said order seeking a further direction commanding the respondents to regularize the service of the petitioner from the date of his initial engagement/appointment on the post of Clerk.

Mr. Shahi, Counsel for the petitioner has submitted



that at the time of establishment of the University in the year 1992, no regular/sanctioned post of Class-III was approved/sanctioned. In such circumstances, an order dated 4.8.1992 (Annexure-2) was issued by the Registrar stating that the Vice Chancellor, in exercise of the powers of the Syndicate, had approved the engagement of the petitioner purely on daily wage/Muster Roll basis in the Examination Department of the University. The petitioner, on account of suffering some physical disablement, did not discharge duties for few years. However, subsequently, he continued to discharge the duties of the post in the same status. He, therefore, submits that if the posts were not sanctioned then the University was entitled to engage such staff on daily wage basis with the sole purpose of smooth functioning of the University. The petitioner, in such circumstances, cannot be said to have been appointed in complete disregard of the statute and the relevant law providing the manner and procedure for appointment on Class-III posts in the University. It has further been urged that recently on 2.12.2014, the State Government has sanctioned altogether 68 posts including Class-III post(s) in the Examination Section of the University. Now since the posts are sanctioned and made available, the petitioner can be considered for appointment thereagainst.



Per contra, Counsel for the University, while opposing the writ petition, has submitted that the case of the petitioner stands sealed when earlier he moved this Court with similar prayer and in consideration thereof, this Court directed vide Annexure-9 for constitution of a three men Committee to examine the claim of the petitioner in the light of the direction issued by the Hon'ble Apex Court in the case of *State of Karnataka versus Uma Devi 2006 (4) SCC 1*. The Committee, on scrutiny of the documents furnished by the University and the petitioner, found that his initial appointment was not against sanctioned post inasmuch as no process of selection was undergone. Further, the petitioner did not discharge his duties for a good number of years. Having found that the petitioner had not continuously discharged the duties on the post, it was recommended for giving him weightage only in the future appointments to be made on regular basis against the sanctioned Class III posts. In the light of the said report, the impugned order has been passed. No fault, therefore, can be found with the impugned order. It has further been pointed out that letter engaging the petitioner on daily wage basis (Annexure-2) is not available with the University.

Be that as it may, considering the rival submissions of the parties, this much is evident that the petitioner had earlier



moved this Court with similar relief which was considered and his claim was directed to be examined by the three men Committee. The Committee did not recommend his case for regularization of service for the reasons stated therein. Indisputably, from the pleadings on record, it does not appear that the petitioner regularly discharged the duties of the post for several years. In such view of the fact, the Committee did not find him suitable to be recommended for his absorption/regularization as continuous discharge of the duties on the post without any judicial intervention was one of the conditions. In the light of the recommendations of the Committee, the impugned order has been passed. The three men Committee, however, considering the facts appearing from the records, recommended for grant of some weightage to the petitioner in case of regular appointment to be made against the sanctioned post(s) made available to the University by the State and the process of selection is undergone.

That being the position, no relief as prayed for in the present writ petition can be granted.

The writ application is, accordingly, disposed of.

(Kishore Kumar Mandal, J)

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