

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1714 of 2014

IN

Civil Writ Jurisdiction Case No. 3877 of 2014

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1. Sahdeo Pandey Son of Sri Bhikhu Pandey resident of village Panapur Langa, P.S. - Hajipur Sadar, District - Vaishali, appointed as Physical Trained Instructor (P.T.I.) Bramhadeo Muni Udasin Sanskrit Maha Vidyalaya (College) Hajipur, District - Vaishali.

.... Appellant/s

Versus

1. The State of Bihar through the Secretary (Higher Education), Human Resource Development Department, Bihar, Patna.
2. The Vice-Chancellor, Kameshwar Singh Darbhanga Sanskrit Vishwa Vidyalaya (University), Darbhanga.
3. The Registrar, Kameshwar Singh Darbhanga Sanskrit Vishwa Vidyalaya (University), Darbhanga.
4. Prancharya (The Principal), Bramhadeo Muni Udasin Sanskrit Maha Vidyalaya Hajipur, District - Vaishali.

.... Respondent/s

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Appearance :

For the Appellant/s : M/S. Lakshmi Kant Tiwary & Anil Kumar

For the Respondent/s : Mr. Manoj Kumar Jha, A.C. to G.P.26

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 08-02-2016

The unsuccessful petitioner is the appellant in this intra-court Appeal. Heard the parties, and with their consent this Appeal is being disposed of at this stage itself. For the reasons stated in the limitation petition the delay in filing of appeal is condoned.

2.The appellant contends that the State Government took a decision on or about 6-9-1980 (Annexure-5 to the writ petition) that in every College there should be one post of Physical Training Instructor. Accordingly, the appellant was employed after due



advertisement by the Governing Body of the College, which was affiliated to Kameshwar Singh Darbhanga Sanskrit Vishwa Vidyalay (University). He continued to work. When no salary was paid to him, in the year 2009 he filed a writ petition, which was disposed of with a direction to make a representation before the Vice-Chancellor of the said University. The Vice-Chancellor of the University by the order impugned had refused to regularize the appellant on the ground that the post, on which he had been appointed in respect of the affiliated College, was never sanctioned. Hence, the present writ petition was filed. The learned Single Judge dismissed the writ petition, holding that the writ petitioner was unable to establish that the post was ever sanctioned, and that being so, there could not be any regularization on an un-sanctioned post.

3. We have once again heard the appellant, who was unsuccessful writ petitioner, at length. From the facts, we find that even though there was a decision of the State Government taken in the meeting on 6-9-1980 that in every College there should be a post of Physical Training Instructor with this clear stipulation that those Colleges, where such posts had not been sanctioned, the University will take steps to sanction the post. There is no document that has been brought on record to show that the College ever sought sanction of the post or the University sanctioned the post of Physical Training



Instructor in respect of the College in question. In 1984, pursuant to the advertisement issued by the College, which is merely an affiliated College having its own Governing Body, advertised and allegedly the writ petitioner-appellant was recruited. In 1995 the University sought list of the employees of the College. The College sent the list, which included the name of the writ petitioner-appellant, but when we refer to such list, it clearly indicates that though the writ petitioner-appellant was appointed to the post of Physical Training Instructor in the year 1984 till 1995, neither was his appointment approved by the University nor a single penny had been paid to him. In response to this statement by the College, it seems the University approved the services of the employees, but not the writ petitioner-appellant. This is what led the filing of the writ petition by the writ petitioner in the year 2009, which was disposed of with an observation, directing the writ petitioner to represent before the Vice-Chancellor. The Vice-Chancellor, on the representation filed by the writ petitioner, has now, by the impugned order, held that the post of Physical Training Instructor in respect of the writ petitioner's College was never sanctioned, and as such the writ petitioner's appointment to the post could either be approved or regularized. In the subsequent writ petition from which this Appeal arises, the learned Single Judge, in view of the aforesaid, has not interfered in the matter. We see no

reason to take a different view of the matter.

4. It is well-settled that before a person can seek regularization on a post, it must be shown that the post was duly sanctioned. The whole case as against the writ petitioner-appellant being that the post was never sanctioned is not repudiated in any manner. No document has been brought on record to show that ever the College asked for the post to be sanctioned, and the University ever sanctioned the post. In absence of the post being sanctioned, this Court cannot issue any mandamus for regularization or recognition of the petitioner's service as such. In that view of the matter, even though the writ petitioner-appellant claims to have been working for over thirty years, no writ would issue for any payment to him or recognize his services.

5. We find no merit in this Appeal. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

B.K.Roy/-

(Nilu Agrawal, J)

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