

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6476 of 2013

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1. Ramjee Paswan S/O Late Dhanuki Paswan Resident Of Village - Adampur, P.O. - Katarmala, Garaul, P.S. - Garaul, District - Vaishali
 2. Manje Thakur S/O Sri Yogal Thakur Resident Of Village - Manika Gujee, P.S. - Manika, P.S. - Musahari, District - Muzaffarpur
 3. Smt. Urmia Devi W/O - Rajendra Sah R/O Mohalla - Amgola, P.S. - Kaji Mohhammadpur, Dist- Muzaffarpur

.... Petitioner/s

Versus

1. The Baba Saheb Bhim Rao Ambedkar University Through Its Vice Chancellor
2. The Registrar, B.R.A. Bihar University, Muzaffarpur
3. The Finance Officer, B.R.A. Bihar University, Muzaffarpur
4. The Principal, M.D.D.M. College, Muzaffarpur

.... Respondent/s

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Appearance :

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| For the Petitioner/s | : | Mr. Shivendra Kishore, Sr. Advocate.
Mr. Vijay Anand, Advocate |
| For the State | : | Mr. Ajay Bihari Singh, SC-19
Mr. Suryakant Kumar, AC to SC-19 |
| For the University | : | Mr. Dhrub Mukherjee,
Mr. Ganesh Singh, Advocates. |

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 25-07-2016

Heard the parties.

2. During pendency of this writ petition on the direction of this Court respondents have allocated Rs.26,66,835/- to the Principal of M.D.D.M., College, Muzaffarpur. Accordingly petitioners have been paid their arrears of salary. Now only small matter left for consideration of this Court about shifting back the date of their regularisation for the purposes of granting relief for pensionary benefits. Two petitioners have already superannuated and one petitioner is going to retire from service on 30.8.2016.
3. Petitioner no.1, Ramjee Paswan, has been regularised

with effect from 1.3.2005, petitioner no.2, Mauje Thakur, has been regularised with effect from 1.8.2011 and petitioner no.3 Smt. Urmila Devi, has been regularised with effect from 1.3.2009 whereas they are claiming that they were appointed on Class IV posts on 10.8.1976, 12.9.1977 and 1.8.1978 respectively.

4. Brief facts of the case is that all the petitioners have been appointed on Class IV posts much earlier as stated hereinabove and petitioner no.2, Mauje Thakur, was earlier regularised with effect from 24.8.1987 which is apparently clear from memo no.B/3615/Muzaffarpur dated 24.8.1987 (Annexure3 to the writ petition). When Ramjee Paswan, petitioner no.1 and Smt. Urmila Devi, petitioner no.3 were not regularised they approached this Court in C.W.J.C. 1642 of 2006 which was disposed of with a direction to constitute a Committee and examine the entry of the petitioners and take decision in accordance with law. It will be relevant to quote the following portion of the aforesaid judgment:

“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 respondent:

(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 which the Committee will evolve its own modality and modus opera 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 hereinabove

(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 procedure and exercise directed hereinabove, status quo in respect of the petitioners obtainable as on today, is directed to be maintained.”

5. The three Men Committee considered the cases of the petitioners but regularised their services with effect from the different dates as petitioner no.1 has been regularised from 1.3.2005, petitioner no.2 from 1.8.2011 and petitioner no.3 from 1.3.2009. In the present writ petition a prayer has been made that

petitioners should be treated to have been absorbed in services for the purposes of pensionary benefits from the date of respective appointment if it is to be treated their regularisation from respective dates as has been mentioned in the notification dated 15.12.2011 (Annexure-5), will cause financial prejudice to them.

6. Learned counsel for the petitioner, in support of his submission, has placed reliance on the following judgments: (i) Braj Kishore Singh & Others vsa. The State of Bihar & others, reported in 1997(1) PLJR 509, paragraph 32 (ii) Braj Kishore Singh & others vs. The state of Bihar & others, reported in 2004(3) PLJR 668, paragraph nos. 6, 12, 15 and 16 and also placed reliance on the order passed in the case of Ganesh Ram & Ors. Vs. State of Bihar, M.J.C. No. 3571 of 2008 who are similarly situated person has been granted relief from the date of his initial appointment. In that case also identical question was raised, after consideration of the facts and circumstances arrived to a conclusion that as the University has recognized their services right from beginning, specifically in the present case period has to be construed notionally for pensionary benefit. In that case this Court has placed reliance on the large number of judgments including the judgment of Direct Recruit Class II Engineering Officers Association V. State of Maharashtra (AIR

1990 SC 1607) and passed the order in favour of the petitioner Ganesh Ram and others. It will be relevant to quote the relevant portion of the aforesaid judgment:

“ I find that decision referred by the University Counsel, 2005(3) PLJR (SC 239) has no application in the present case. Petitioners were regularised in service, in the light of order/direction passed in the writ application. The direction was to regularize petitioner's service in the light of Braj Kushore Singh's case. The date mentioned in modification of regularisation, in this way had no relevant, so far consequential benefits are concerned. Subsequently when petitioners approach this Court for a direction to make payment of arrears of salary, pension and pensionary benefits, there was no reason to question, entitlement of these petitioners. They were entitled for all consequential benefits, in the light of Full Bench decision in Braj Kishore Singh's case, as it was a law, settled on this point. The writ application was disposed off giving direction to make payment considering representations' filed by the petitioners. In this circumstance, the subsequent stand taken by the Opposite party, denying each benefit to the petitioners, on account of date mentioned in the notifications for regularisation, is contemptuous. In their show cause, the Opposite parties have stated that, they have fully complied the direction of the High Court is contrary to their contemptuous action.

The Opposite parties are directed to file fresh show cause, showing full compliance of the direction of this Court. Compliance must be in consonance with the law settled in Braj Kishroe Singh's case.”

7. Learned counsel for the University has taken a plea that petitioners have entered into service in an illegal manner as they have not been appointed against the advertisement. In fact, they were not working in the College but in the Hostel. They were

being paid the salary from contingency fund of the College, not the grant received by the College. No Selection Committee was constituted, petitioners had never faced any type of interview and so much so present case is not identical to the case of Braj Kishore Singh (supra) and submitted that petitioners have rightly been given the benefit from the date as mentioned in the notification.

8. The facts remains that petitioners have already been regularised in service by notification dated 15.12.2011 (Annexure-5) in such situation the manner of their entry is no longer required to be gone into inasmuch as the notification it does not show that petitioners were ever treated to have been appointed in the hostel but they have been regularised in the service of the College. So much so in terms of Braj Kishore Singh (supra) if persons have been appointed within the staffing pattern in such circumstances, the service that has been rendered cannot be invalidated as no institute can run without help of supporting staff. On this matrix, this Court has held that no advertisement or no such interview does infer their entry to be illegal. It will be relevant to quote paragraph 32 of the aforesaid judgment:

“32.In the above premises, the judgment of the learned Single Judge rejecting the claim of the appellants on the ground that they were appointed without prior approval of the State Government as contemplated under Section 35 of the Act cannot be sustained. In the ordinary course, in view of my



conclusion that it is open to the State Government to consider the validity of appointments already made for the purpose of granting or refusing post facto approval, I would have considered asking the State Government to look into the claim of the appellants afresh. However, having regard to the fact that the appellants have continued in service for more than 17 years, I do not think it would be appropriate exercise of discretion to re-open the matter after such a long lapse of time. In *Direct Recruit Class-II Engineering Officers Association v. The State of Maharashtra*, AIR 1990 Supreme Court 1607 a Constitution Bench of the Apex Court has held that where initial appointment is not made according to the rules but the appointee continues in service uninterruptedly for long period till regularisation of his service, the entire period as the period spent in service for the purpose of consequential benefits will be counted. The appellants are accordingly entitled to have their services regularised against the posts within the staffing pattern as applicable to the College.”

9. Braj Kishore Singh’s case again came for consideration with regard to granting benefit in the case of Braj Kishore Singh vs. The State of Bihar & Ors., reported in 2004(3) PLJR 668 and this Court has considered the question as to whether the appellants were entitled to payment of arrears of salary or not, for a period to their regularisation as ordered by the Full Bench was not subject matter in the earlier writ petition. The Court has considered the earlier Full Bench judgment where this Court has approved the appointment of Braj Kishore Singh and others instead of remanding back the matter treated them to have been regularised in service. The Court has held that Braj Kishore

Singh and others are entitled to arrears of salary. It will be relevant to quote paragraph nos. 12 to 15 of the aforesaid judgment:

“12. Admitted fact is that the appellants were appointed in 1979. Their appointments were approved by the University. The only question in controversy was as to whether their appointments was legal or not. The State Government took the stand that as that was beyond the staffing pattern, the appointment was not permissible in law. The Full Bench of this Court as stated above has held that the appellants were appointed against the post as per staffing pattern. However, it was open to the State Government to consider the validity of their appointment for the purpose of granting or refusing to grant post-facto approval in terms of Section 35 of the Act as interpreted by the Full Bench. The Full Bench further observed that it would have sent the matter to the State Government to consider the validity of their appointment but as stated above taking into consideration more than 17 years of their services ordered for regularisation of their services against the post within the staffing pattern as applicable to the college. Though the Full Bench did not pass specific order as to from which date the regularisation is to take effect but as it appears from paragraph 32 of the judgment that the Full Bench took note of the judgment of the Apex Court in the case of Direct Recruit Class II Engineering Officers Association and held that the period prior to regularisation shall be countered for the purpose of consequential benefits.

13. The question as to whether the appellants were entitled to payment of arrears of salary or not for a period to their regularisation as ordered by the Full Bench was not subject matter in the earlier writ application. As stated above, the writ application was filed challenging the order refusing to grant approval to the appointment of the appellants and as such the claim of the appellants for arrears of salary etc., cannot be

rejected on the ground that there was no such direction by the Full Bench judgment of this Court.

14. From perusal of the Full Bench judgment it appears that the Full Bench accepted the appointments of the appellants from the initial date and thereafter passed the order of regularisation instead of sending the matter for post facto approval of their services. In case the matter would have been sent to the Government and in case of approval of their services from the date of the appointment they would have been entitled to salary from the very beginning. This Court instead of adopting the said procedure passed an order of regularisation. It is not disputed that the appellants have rendered their services in the College. It is also not disputed that they were paid salary prior to passing of the order of the State Government in 1983 for some time. In such a situation, they cannot be denied the salary prior to 20th May, 1998 when the order of regularisation was made. It will be unjust and inequitable to hold that though the appellants continued to work in the college and this Court having noticed their continuance in service and having ordered that the services rendered by them will be counted for purpose of consequential benefits, they are not entitled to payment of arrears of their salary. Even the State Government has understood the order of this Court in the same manner but later on reviewed the same which is subject matter of challenged before this Court.

15. Accordingly, the impugned order dated 19th July, 1998 is quashed and it is held that the appellants are entitled to payment of arrears of their salary for the period prior to regularisation and other consequential benefits by treating them as appointed in the year 1979.”

10. In the case of Ganesh Ram case this Court has also considered the earlier judgment. In the case of Ganesh Ram the question was raised whether non-payment of arrears of salary,



pension and pensionary dues to the petitioners on account of notification issued by the University and its approval by the State Government regularizing the services of the petitioners with effect from 16.7.1998, ignoring entire period spent in service, make out a case of contempt and authorities should properly comply the direction of this Court directed for filing of fresh show cause, showing compliance of direction of the Court. The Court has arrived to a finding that Ganesh Ram was entitled to the pensionary benefits such as arrears of salary and pensionary from the anterior date benefits considering the Full Bench of Braj Kishore Singh's case.

11. In such view of the matter, it will be relevant to quote relevant portion of the aforesaid judgment:

“ I find that decision referred by the University Counsel, 2005(3) PLJR (SC 239) has no application in the present case. Petitioners were regularised in service, in the light of order/direction passed in the writ application. The direction was to regularize petitioner's service in the light of Braj Kishore Singh's case. The date mentioned in modification of regularisation, in this way had no relevant, so far consequential benefits are concerned. Subsequently when petitioners approach this Court for a direction to make payment of arrears of salary, pension and pensionary benefits, there was no reason to question, entitlement of these petitioners. They were entitled for all consequential benefits, in the light of Full Bench decision in Braj Kishore Singh's case, as it was a law, settled on this point. The writ application was disposed off giving direction to make payment considering representations' filed by the petitioners. In this circumstance, the subsequent stand taken by the Opposite party, denying each benefit to the

petitioners, on account of date mentioned in the notifications for regularisation, is contemptuous. In their show cause, the Opposite parties have stated that, they have fully complied the direction of the High Court is contrary to their contemptuous action.

The Opposite parties are directed to file fresh show cause, showing full compliance of the direction of this Court. Compliance must be in consonance with the law settled in Braj Kishroe Singh's case."

12. In view of the aforesaid discussion applying the aforesaid principle it is an admitted fact that petitioners have entered into service earlier when they were not regularised they approached this Court for regularisation, the University constituted a Committee, found their entry to be legal and in pursuance thereof they have been regularised in service. The University itself regularize the service, so at this stage plea of the University that entries of the petitioners are illegal and nonest as it is against violation of Articles 14 and 16 of the constitution of India and cannot be reopened. The only question left for pensionary benefits whether the earlier period will be reckoned when the petitioners have been working right from beginning as stated hereinabove and they were pursuing the matter of regularisation ultimately at the behest of this Court their services were regularised. It will be travesty of justice to ignore the period they have discharged in service only for the purpose of pensionary benefits.

13. In such view of the matter, this Court holds that

petitioners are entitled for their pensionary benefits from the date of initial appointment and the period that has been spent will be considered for the purpose of their retiral dues. This Court is not granting the benefit of arrears of salary but is confined for the purposes of pensionary benefits.

14. With the aforesaid observation and direction this writ petition is allowed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	5.8.2016
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