

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1844 of 2012

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Jwala Prasad Singh, Son of Late Ramswaroop Singh R/O - Village - Bishunpur,
P.S. - Wazirganj, District - Gaya (Bihar)

..... Petitioner Appellant

Versus

1. The T.M. Bhagalpur University, Bhagalpur, through Its Registrar
2. The Vice-Chancellor, T.M. Bhagalpur University, Bhagalpur
3. The Registrar, T.M. Bhagalpur University, Bhagalpur
4. The Finance Officer, T.M. Bhagalpur University, Bhagalpur
5. The State Of Bihar, through The Principal Secretary, Department of Education,
Government of Bihar, New Secretariat, Patna
6. The Director, Higher Education Department, Govt. of Bihar, Patna
7. The In-Charge, State Govt's Auditors Team, Deputed at T.M. Bhagalpur
University, Bhagalpur.

.... Respondents

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Appearance :

For the Appellant	:	Mr. Purshottam Kumar Jha, Advocate.
	:	Mr. Sanjay Kumar, Advocate.
For the University	:	Mr. Rajendra Kumar Giri.
For STATE	:	Mr. Bhardwaj, AC to GA5

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 29-02-2016

The appellant is aggrieved by the judgment and order dated 16.08.2012 passed in CWJC No. 13735 of 2012, by which order, a learned Single Judge of this Court dismissed the writ application filed by the appellant. The writ petitioner/appellant by the writ petition had sought payment of

arrears of salary for the period 30.08.1999 to 04.06.2003 and for calculating the said period as a part of a service, thereby entitling him to other pensionary benefits upon his superannuation.

2. We have heard learned counsel for the parties and with their consent, this appeal has been heard for final disposal at this stage itself.

3. The facts are not in dispute. The writ petitioner/appellant was recruited as 'Darwan' in Hostel No.2 of Post Graduate Boy's Hostel at Tilkamanjhi Bhagalpur University, Bhaglapur (for the sake of brevity the 'University') on 05.09.1997 as daily wager. It may be noted here that prior to coming into force of the Bihar Universities Act, 1976, 134 posts in Class IV were sanctioned including for Boy's Hostel as aforesaid. It was on these sanctioned posts that writ petitioner/appellant was recruited as a daily wager. The Syndicate of the University in its meeting dated 19.07.1981 decided to absorb in permanent service of Class IV employees working in different hostels of the respondent University. This is Annexure-1 to the writ petition. Pursuant to the aforesaid formal Office Order was issued by the University, being Office Order No. 41 of 84 dated 04.08.1984, whereby the services of



the petitioner and others were absorbed with effect from 01.08.1981. This is Annexure-2 to the writ petition. It may be noticed that this order has neither been withdrawn nor canceled by the University till date. Consequently, the writ petitioner/appellant continued to be paid his regular salary up to 30.08.1999, virtually without break. It appears that at that stage a controversy started, whether under the Bihar Universities Act, 1976, the posts were sanctioned or not? The stand of the employees was that the posts were already sanctioned, as noticed above, prior to 1976 itself. As the hostels were in existence from prior to 1976 Act and, in any view of the matter as there existed a staffing pattern, in view of the Full Bench judgment of this Court in the case of **Braj Kishore Singh & Ors. -Versus- the State of Bihar & Ors** since reported in **1997 (1) PLJR 509**, the posts, according to staffing pattern, would be deemed to be sanctioned, but, notwithstanding the aforesaid, under some misconception, the University sought fresh sanction from the Government and this time the Government reduced and sanctioned only 47 posts. It is because of that confusion the salary of petitioner and his like were stopped though they continued to work. After this sanction by the State an advertisement was published in the newspaper for appointment/



absorption/regularization of employees on Class-IV posts on or about 19.10.2001. In view of the confusion prevailing in the University and the precarious condition in which the writ petitioner/appellant was posted, he also applied. The writ petitioner/appellant was selected, absorbed and his salary was then paid from June, 2003. Hence, the period of dispute of status of the petitioner in between 31.08.1999 to 04.06.2003, there is no dispute thereafter. The petitioner superannuated with effect from 31.05.2010, but when he filled his papers for grant of retiral dues, he was told that he had not completed 10 years of service, which is qualifying service for retiral dues. He then filed the present writ petition, which, as noted above, was dismissed on account of delay in approaching for verification of the record. Before the learned Single Judge, reliance was placed not only on the Full Bench judgment of this Court in the case of **Braj Kishore Singh (Supra)** but also in the case of **Sushil Thakur Vs. Tilkamanjhi Bhagalpur University & Ors**, being judgment dated 06.04.2011 passed in CWJC No. 2714 of 2006, which was affirmed by the Division Bench in L.P.A. No. 1902 of 2011, which L.P.A. of the University was dismissed on 02.03.2012, wherein the learned Single Judge of this Court had taken note of the sequence of events and held that posts were

duly sanctioned and the petitioner and their like were duly regularized on the said posts under similar circumstances. But, in the writ proceedings of the instant case, the learned Single Judge held that the writ petitioner/appellant, though similarly situated, could not be granted any relief because of belated approach of this Court.

4. We have gone through the records and we find that once this Court, in the case of, had already held that the employees were regularized Sushil Thakur (Supra) by the University itself who have given the same benefits to other similarly situated employees including the writ petitioner/appellant, it is only after superannuation of the petitioner/appellant, when he was denying the retiral benefits, ignoring the judgment in case of Sushil Thakur (Supra), had approached this Court.

5. In our view, the University could not have done so on the facts and circumstances being the same. We are of the opinion that the writ petition ought to have been allowed and, for the period under consideration as noted above, the writ petitioner/ appellant had to be paid his remuneration and the said period would have to be taken into account for granting him continuity in service and consequently in retiral dues.



6. Therefore, we allow this appeal and set aside the order of the writ Court, with a direction to the University to pay the arrears of the salary for the period, in question, and take note to consider the period of his service from 30.08.1999 to 04.06.2003 for the purposes of calculating his total period of service with all consequential benefits, in so far as retiral dues are concerned.

(Hemant Gupta, J.)

(Navaniti Prasad Singh, J.)

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