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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10383 of 2013

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Most. Shakuntala Devi, wife of Late Ram Swarup Prasad, Resident Of Mohalla - Mangala Gauri, P.O. Chand Chaura, P.S. Civil Lines, District - Gaya

.... Petitioner

Versus

1. Magadh University, Bodh-Gaya, through the Vice-Chancellor, Magadh University, Bodh-Gaya, Gaya.
2. Vice - Cancellor, Magadh University, Bodh-Gaya, Gaya.
3. The Registrar, Magadh University, Bodh - Gaya, Gaya.
4. The Finance Officer, Magadh University, Bodh - Gaya, Gaya.
5. The Principal Jagjiwan College, Gaya.
6. The State Of Bihar Through The Secretary, Higher Education, Government of Bihar, Patna.

.... Respondents

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Appearance:
For the Petitioner/s : Mr. Surendra Kumar Singh, Senior Adv.
Mr. Praveen Prakash, Adv.
For the Respondent/s : Mr. Alok Kumar Rai, A.C. to G.P.21
For the University : Mr. Vipin Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 11-11-2016

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the University.

2. It is one of the most unfortunate case in which the University is trying to mislead the Court by suppressing the material facts from this Court.

3. In the present case, the petitioner has challenged the order dated 23.11.2012, by which the claim of the petitioner has

been rejected having mentioned that the husband of the petitioner was not appointed against the sanctioned post nor his post was sanctioned by the State Government nor even he was adjusted against the sanctioned post, hence, the petitioner is not entitled for death-cum-retiral dues.

4. From the record, it appears that the husband of the petitioner was appointed on muster roll. By letter dated 19.02.1982 (Annexure-2), the husband of the petitioner was asked to join the post of Typist on or before on 1.3.1982. In pursuance thereof, he joined the post on 1.3.1982 and later on, vide letter dated No. 114/P2/82 dated 27.4.1982, addressed to the husband of the petitioner, wherein it has been mentioned that "with reference to the letter dated 26.04.1982 as directed to inform you that the Vice-Chancellor, Magadh University, Bodh-Gaya, has been pleased to approve your services on regular basis in permanent chain on the basis of your services rendered on daily wages. Your Scale of pay plus other allowances will be governed as per the act and statutes of the Magadh University and your services will be continued permanent since the date of your appointment dated 1.3.1982".

5. Since then the husband of the petitioner performed the duty and after reaching the age of 60 years he was made to

superannuate vide letter dated 31.1.2003 and after retirement the husband of the petitioner applied for retiral benefits, which were not paid to him. The husband of the petitioner died on 13.04.2007. Whereafter, the petitioner has made claim for death-cum-retiral dues of her husband. By letter dated 26.12.2007, the Principal of the College sent the relevant paper for final payment of reitral dues to his heirs and successors, informing that husband of the petitioner-Ram Swarup Prasad has died on 13.4.2007. The petitioner was moving around and when she could not get the benefit, she approached this Court in C.W.J.C. No.6542 of 2009. This Court vide order dated 22.5.2009 disposed of the said writ application with a direction to the respondents to dispose of the representation of the petitioner within a period of three months. When the representation of the petitioner could not be disposed of within time, she filed a Contempt Petition being Miscellaneous Jurisdiction No.2740 of 2010 only thereafter the authority has passed the impugned order.

6. In the present case, counter affidavit has been filed by the University, which was sworn on 17.7.2014. In paragraph No.2 to 7, it has been averred as follows:-

> *"(ii) The petitioner's husband late Ram Swaroop Prasad was appointed on muster roll as a Typist on*

19/02/1982 and has joined on 01.03.1982 at J.J. College, Gaya.

(iii) The petitioner regularly worked and was in chain and superannuated on 01/02/2003. The petitioner has attached a letter of Principal regarding his services will be on regular basis in permanent chain.

(iv) The regularization is a established norm and different bodies of University involved and notification and made to working on sanctioned post.

(v) The issue was already raised in C.W.J.C. No.6542 of 2009 which was disposed with direction to file representation before University and directed University to dispose lawfully considering the claim of petitioner's widow.

(vi) The representation was disposed with reasoned order by V.C. Magadh University on 23/11/12. The petitioner also filed M.J.C. No.2740/10 and was disposed of by Hon'ble Court on 30/01/13.

(vii) The reasoned order is attached as annexure one. The whole issue is explained. The petitioner's husband was not on sanctioned post and his service was not regularized. The proposal of payment of late Ram Nayak Thakur was also rejected by State Government.

Hence, the order is being challenged by the

petitioner which has no merit and case is not tenable."

7. In the counter affidavit, nowhere the University has taken plea that the husband of the petitioner was not appointed and he was not discharging the duty, but at the later stage, second supplementary counter affidavit has been filed, there the respondents have fished out two letters; first letter dated 26.04.1982 and another letter dated 16.09.1987. The letter dated 16.09.1987 shows that the husband of the petitioner was made entitled to get the salary only from the date of sanction of their post. The terms of the letter is as follows:-

"The Vice Chancellor has been pleased to order that the following persons be allowed to work in J.J. College, Gaya, if they so desired, provided they give an undertaking in writing that they will be entitled to get their salary only from the date the Government sanctioned their posts".

8. In para-4 of second supplementary counter affidavit, it has been mentioned that the petitioner's husband was appointed on staffing pattern.

9. Learned counsel for the petitioner has drawn the attention of the Court to the "Statement of Pay Fixation of Non-

Teaching Staffs in Revised New Pay Scale Effective from 01.01.1996", annexed as Annexure-J (Series), in which the name of the husband of the petitioner is standing at serial No.4, against column No.5 his effective date of joining has been shown as 01.03.1982. So, these documents go to show that the husband of the petitioner has been working since 01.03.1982.

10. The stand of the University is changing, on the one hand it says on affidavit that the husband of the petitioner has been working since 01.03.1982 and on the other hand stand has been taken by the University that the husband of the petitioner was not working against the sanctioned post. It is required to be noted that all the affidavits which have been filed in this case are sworn by one Manoj Kumar-Nodal Officer of the University. The stand of the University and finding recorded by the Vice Chancellor is just contrary to the records brought in this case, which show that the husband of the petitioner was working since 01.03.1982.

11. During the course of argument, learned counsel for the University has tried to show that in the year 1984 the services of the husband of the petitioner were dispensed with. In support of his submission, he has drawn the attention of the Court to a letter, but the same is not having its memo number or date. So, it can be said

that this letter was never issued rather it is only a part of the file, does not carry any credence.

12. In such view of the matter, the claim of the University that the services of the husband of the petitioner was declared to be invalid is completely unsustainable and *dehorse* to the facts which are available on record.

13. Learned counsel for the State has taken a stand that the posts were not sanctioned by the State, but the University has brought a letter dated 22.11.1999, whereby and whereunder they have written letter to the Government for creation and sanction of the posts. Thereafter, no reply was received by the University.

14. Learned counsel for the State submits that such letter is not available on record and the State has also requested the University to give the details, but no such details have been furnished by the University.

15. This Court has an occasion to deal with the present situation when the new colleges are created and the sub-ordinate staffs are appointed what will be status of the staffs came for consideration before this Court in Full Bench in the Case of ***Braj Kishore Singh and Others vs. The State of Bihar and Others,***

reported in ***1997(1) PLJR, 509.*** This Court was of the view that if the subordinate staffs have been appointed within the staffing pattern, they will be treated that they were validly appointed against the sanctioned post and they cannot be treated that they were illegally appointed. Reason has been assigned that no institution can run without having a sub-ordinate staff. Ultimately, the Court was of the view to send the matter for fresh consideration to the Government, but looking to the time consumed, the Court has directed for granting the benefit which is available under the University Act.

16. It will be relevant to quote paragraph Nos. 12, 13, 22 and 30 of the aforesaid decision, which read as under:-

> *"12. Another aspect which should be kept in mind that Section 35 does not envisage sanction, individually, with respect to each and every post of teachers or non-teaching staff. The authority may create one post or a number of posts at the same time. It may be sufficient if instead of creating post or posts for a particular institution, a general staffing pattern is laid down. If such staffing pattern is laid down it would amount to creation /sanction of posts. That would also be conducive to the exercise of power under Section 21. In other words, the College/University may make appointment against posts in accordance with the*

staffing pattern, then apply for affiliation. This would enable the State Government to consider the viability of the institution for the purpose of granting or refusing approval to its proposed affiliation. This would also make the provisions of Section 35 workable.

13. The point for consideration, therefore, is whether a general staffing pattern has been laid down by the State Government or not. Such an exercise, in my opinion, is necessary and also expedient because it is more or less an admitted position that the power under Section 35, as such, has never been exercised by the State Government and if a strict interpretation of the provisions were to be made, appointment of almost all teachers and non-teaching staff in each and every College would be rendered illegal. It is another matter that, as regards teachers, statutes have been framed for regularisation of their services but so far as Section 35 is concerned it puts both teachers and non-teaching staff on par. In fact, regularisation of the serves of teachers under statutes framed for that purpose without making corresponding provisions for the non-teaching staff has caused heart burn and consternation and given rise to a plea of discrimination.

22. The above discussion may be summed up in these words. By reason of the approval of the staffing pattern proposed by the Bihar Inter University Board, non-teaching cases III and IV posts will be deemed to have

been created with the prior approval of the state Government i.e. sanctioned. Appointments can be made against these posts in accordance with the staffing pattern without seeking further approval regarding post (s). Merely on the ground that prior approval of the State Government was not obtained, the appointment cannot be said to be illegal. The College/University authorities are competent to make appointment of eligible and suitable persons against such posts. Ordinarily, this should be done with the prior approval of the State Government. In exceptional cases, in exigency of service or situation, provisional appointment can be made subject to approval of the State Government within the stipulated time-frame. It is open to the State Government to examine the eligibility and suitability of even those who have already been appointed against the sanctioned posts as per the staffing pattern.

30. In view of my interpretation of Section 35 of the Act and conclusion that the staffing pattern has already been laid down which amounts to creation of posts, the abovesaid decisions cannot be said to be correct in law. The Supreme Court rejected the S.L.Ps. summarily and these orders cannot be understood as upholding the judgments/orders on merit. If the appointments are made against posts as per the staffing pattern i.e. within the sanctioned strength, they cannot be said to be violative of Section 35 of the Act and illegal on the ground that the posts have not been sanctioned by the

State Government provided, or course, the candidates possess the eligibility and suitability and the selection/appointment process was in conformity with Articles 14 and 16 of the Constitution."

17. In the present case, neither the University nor the State has disputed the fact that the husband of the petitioner was appointed within the staffing pattern. It is very relevant that during the life time of the husband of the petitioner, was not informed that he was not appointed validly and against the sanctioned post, when he died then the University and the State started playing game with the widow without the help of unimpeachable documents.

18. The affidavit of the University explicitly shows that the husband of the petitioner all through worked from 1982 in the college, even for certain period he may not be in the service but regularized which is corroborated from the pay fixation document itself shows that the University all through has treated him to be in employment since 1982.

19. This matter is of the year 2013. Several adjournments have been given to the learned counsel for the University and the State, but without proper result. In such view of the matter, this Court directs the University and the State Government equally to

release all the death-cum-retiral dues treating the husband of the petitioner was appointed against the sanctioned post on 01.03.1982, performed the duty till his superannuation alongwith compound interest at the rate of 18% per annum. It is clarified that if the payment is not made within two months from today, then the respondents will be liable for the Contempt proceeding.

20. With the aforesaid observations and directions, this writ application is allowed.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	21.11.2016
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