

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1491 of 2012

IN

Civil Writ Jurisdiction Case No. 21739 of 2011

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Vijay Kumar S/O Ram Manohar Prasad Singh, Resident of Mohalla-
Aghoria Chowk, P.S- Mithanpura, District- Muzaffarpur.

.... Appellant

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development
Department, Government of Bihar, Patna.
3. The Secretary, Department of Higher Education, Government of
Bihar, Patna
4. The Director, Higher Education, Government of Bihar, Patna.
5. The Vice Chancellor, Baba Saheb Bhim Rao Ambedkar, Bihar
University, Muzaffarpur.
6. The Registrar, Baba Saheb Bhim Rao Ambedkar, Bihar University,
Muzaffarpur.
7. The Principal, Ram Dayalu Singh College, Muzaffarpur.
8. Subodh Kumar Singh @ Subodh S/O Rajiv Ranjan Singh Resident of
Village- Madhopur Hazari, P.S- Sahebganj, District- Muzaffarpur.

.... Respondents

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Appearance :

For the Appellant	:	Mr. Yugal Kishore, Sr. Advocate Mr. Vijay Kumar Singh, Advocate Mr. Ugranath Mallik, Advocate
For the State	:	Mr. Nasim Yahya, GP-13
For the University	:	Mr. Vikas Ratan Bharti, Advocate

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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: 22-01-2016

The delay in filing the appeal is condoned.

2. The appellant is one of the
unsuccessful writ petitioner aggrieved from the
judgment and order of learned Single Judge vide order

dated 19.04.2012 passed in C.W.J.C. No. 21739/2011, whereby the writ Court refused to pass orders for regularization of the writ petitioner. The facts are not in dispute.

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

4. It is not in dispute that, on 11.04.1986, the writ petitioner was appointed as a Clerk in R.D.S. College, Muzaffarpur, now under Baba Saheb Bhim Rao Ambedkar University, Muzaffarpur. The College was a constituent College and there is no dispute that the Principal, in absence of Clerk in the College, had appointed him. He continued to work and till date has been working as such. No doubt, his appointment was irregular. There are contemporaneous records to show that even University directed for payment of basic wages to the writ petitioner. A Committee was then formed by the University, pursuant to orders of this Court passed in several writ petitions, for scrutinizing the records of the College with regard to Class III & IV employees for the purpose of their regularization. The report of the Committee is Annexure-26 to the writ petition. The





Committee, apart from several others, inspected the writ petitioner's College and noticed that as the writ petitioner had been appointed prior to 2001, and there was sanctioned vacant post, and had been continuously working, he should be regularized. Even though, the report recommended for regularization, the University in its turn, while regularizing all others, left out the two writ petitioners from regularization. The University also does not pass an order of termination. Being aggrieved by non-regularization, the writ petition was filed which was dismissed by the learned Single Judge which lead to this Intra-Court Appeal.

5. To us, judgment and order of the learned Single Judge cannot be upheld. The first thing we must notice is, regularization itself pre-supposes irregularity in initial appointment, if the initial appointment had been regular there would be no occasion for regularization. In the present case, the facts are clear. The writ petitioners were appointed in 1986 and have been in service throughout. Their appointment was on a post which was deemed sanctioned post in view of the staffing pattern and what has been said by Full Bench of this Court in the case of **Braj Kishore**



Singh Vs. State of Bihar since reported in **1997 (1) PLJR 509**. It is also not in dispute that upon superannuation of an employee in the Accounts Department, even in sanctioned post, there are vacancies. At this stage, we may notice that two circulars were issued by the State Government being circular dated 11.07.1989 and circular dated 10.05.1991 both issued by the Human Resources Department, Government of Bihar, Patna, in which, it has been clearly stated that those who had been appointed prior to 10.05.1986 by the Principal in accordance with the staffing pattern should be regularized. That being so, in view of the fact that this appointment continued with the knowledge of the University authorities and direction of the University to the College authorities to make payment of the basic wages of the writ petitioners.

6. We are of the considered view that it was a case where the recommendation of the Committee, constituted by the University for writ petitioner, regularization, had to be accepted. In this connection, we may also note a recent judgment of the Supreme Court in the case of **Amarkant Rai Vs. State of Bihar** since reported in **2015 (2) PLJR 437(SC)**;

wherein under similar circumstance the Apex Court directed for regularization of an employee of Lalit Narain Mishra University, Bihar.

7. Having considered the matter in our view, in view of the facts as noted above, the judgment and order of the learned Single Judge cannot be sustained. The University, in our view, would be required to proceed in accordance with the recommendation of the Committee, whose report is on the record recommending regularization of the two writ petitioners.

8. The judgment and order of the learned Single Judge is, thus, set aside, and writ petition, for regularization, is allowed. University to take steps in this regard at the earliest not later than three months from today.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/N.A.F.R.

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