

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9111 of 2013

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Bimlesh Prasad Singh, S/O Late Jagdish Singh, resident of Villge- Dhanaw,
P.S.- Navinagar, District- Aurangabad,

Presently Working as Casual/Contractual Clerk/Staff since
03.02.1990 in Sanjay Gandhi Institute of Dairy Technology, Jagdeopath,
Patna

.... Petitioner

Versus

1. Bihar Agricultural University, Sabour Bhagalpur, through its Vice Chancellor.
2. The Vice Chancellor, Bihar Agriculture University, Sabaur, Bhagalpur.
3. The Registrar, Bihar Agriculture University, Sabour, Bhagalpur.
4. The Director, Administration, Bihar Agriculture University, Sabour Bhagalpur.
5. The Officer In Charge (Appointment) Bihar Agriculture University, Sabour Bhagalpur.
6. The Dean, Faculty Of Dairy Technology, Sanjay Gandhi Institute Of Dairy Technology Jagdeo Path, Patna Within Bihar Agriculture University, Sabour, Bhagalpur.
7. Deependra Kumar, son of Bhupendra Prasad Mandal, selected on the post of Statical Computer, Roll No. SCM-092, U.R. category, Bihar Agriculture University, Sabour, Bhagalpur, thorough the Director, Administration.
8. Sunil Kushwaha, son of Satya Narayan Singh, selected on the post of Accounts Clerk (Lekha Lipik), Roll No. A.C. 089, Bihar Agriculture University, Sabour, Bhagalpur, through the Director, Administration.

.... Respondents

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Appearance:

For the Petitioner : Mr. Jagannath Singh, Adv.
For the Bihar Agriculture University : Mr. Dr. Anil Kumar Chaudhary, Adv.
Mr. Chandra Mohan Singh, Adv.
For the Private Respondent No.7 : Mr. Naresh Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 22-09-2016

In the present case, the petitioner is claiming that he
has wrongly been refused to grant the benefit of weightage in terms

of the Hon'ble Supreme Court's Judgment passed in Special Leave Petition (Civil) No. 18594 of 1994 while making recruitment to Class-III post, which the petitioner was holding.

2. As per the claim of the petitioner, he was appointed as daily wager and discharged the duty in the Sanjay Gandhi Institute of Dairy Technology, Patna, which falls within the domain of Rajendra Agriculture University, Pusa, Samastipur. In the Bihar Agriculture University, Bhagalpur, a large number of persons were working on Class-III and IV posts on casual basis, they were always pursuing for their regularization, ultimately, they approached this Court, but could not get the desired result, ultimately, the matter went to the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 18594 of 1994 (Ram Kumar Sharma and Ors. vs. Rajendra Agriculture University & Ors.).

3. The Hon'ble Supreme Court considered the predicament of casual employees who were working for quite a long period, some persons were working for 15 years and some were working for 20 years. Considering their condition, the Hon'ble Supreme Court has taken a view that 35% vacancies will be filled up through the process of regularization and 65 % vacancies will be filled up from the open market. Those who have



discharged the duties as casual employee will be given 2% marks for each completing years of service for their experience upto to maximum 30%. 50% marks will be based on educational and other qualification as laid down in the advertisement and 20% will be given on the basis of performance in the interview. The Hon'ble Supreme Court has clarified the meaning of 'completed years of service' which means 240 days of service in a year, if a person has served 240 days in a year, will be treated to be one year of continuous service, ignoring the artificial breaks created by the employer. The Court has also given relief of regularization upto the age of 50 years in the case of casual employees serving in the Agriculture University in the State of Bihar.

4. It will be useful to quote the relevant paragraphs of the said judgment of the Hon'ble Supreme Court, which makes it very clear the nature of direction given by the Hon'ble Supreme Court, which read as under:-

“After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel appearing for the parties and the proposal for regularization offered by both the parties, it appears to us that the exercise of regular appointment should be taken up without delay and should be completed preferably within a period of six months from today. In the

special facts of the case, it appears to us that it will be only proper and consistent with the Justice that the regularization of the casual employees of the Rajendra Agricultural University should be made in the following manner:-

So far as Class-IV posts are concerned, regular appointment against available vacancies for regular sanctioned post under the Bihar State Agricultural Universities Act, should be made by appointing the casual employees who have worked in the Rajendra Agricultural University for more than 15 years against 35% of available vacancies provided such employees have requisite qualification for regular appointment and they are also physically fit for permanent absorption. In respect of balance 65% vacancies, invitation of application by open advertisement by following the usual procedure for filling up the vacancy in the University services should be made.

The casual employees of the Rajendra Agricultural University who will not be absorbed against 35% reserved quota as indicated hereinbefore, will be entitled to apply for the said 65% posts. The following criteria will be followed for selection against the 65% posts. For each year of completed service of the casual employees, 2% marks will be given, for their experience upto the maximum of 30%. For educational and other qualification as laid down in the advertisement 50% marks would be given and 20 marks will be allotted on the basis of performance in the interview. It is clarified that for the casual employees year of completed service will mean, by ignoring artificial break, 240 days of service in a years.

There will be relaxation of age upto 50 years in the case of casual employees serving the Rajendra Agricultural University in the State of Bihar and appointment will be given provided such employees are physically fit for regular absorption.

The same principle will also be followed for filling up the Class III posts after giving the same relaxation of age. The casual employees who will not be absorbed either against 35% of reserved quota or balance 65% vacancies as indicated above will be disengaged from the services after exercise of selection process is completed. Such exercise should be taken up as early as practicable and the selection process should be completed within a period of six months from today.”

5. As the aforesaid direction of the Hon’ble Supreme Court was not carried out, some of casual employees approached the Chancellor, bringing his notice that even after the direction of the Hon’ble Supreme Court; the University authorities were sitting tight over the matter. The Chancellor considered the order of the Hon’ble Supreme Court and found that the University authorities are violating the direction of the Hon’ble Supreme Court. Accordingly, the Chancellor has issued the direction to implement the order of the Supreme Court in the following terms:-

“Shramik Sewa Sangh, I.N.T.U.C. Bihar Agriculture College, Sabour has filed a representation for the

regularization of the services of casual employees who have been working in the said College with different designations for the last 15-25 years in the light of the order dated 18.02.1998 given by the Hon'ble Supreme Court in SLP (Civil) No.18594 /94.

The Hon'ble Supreme Court in its order dated 18.02.1998 has directed that exercise on regular appointment should be taken up without delay and it should be completed preferably within a period of 6 months from today.

The Hon'ble Supreme Court has further observed that "So far Class-IV are concerned, regular appointment against available vacancies for regular sanctioned posts under the Bihar State Agricultural Universities Act should be made by appointing the casual employees who have worked in the Rajendra Agricultural University for more than 15 years against 35% of the available vacancies, provided such employees have requisite qualifications for regular appointment and they are also physically fit for permanent absorption." The Hon'ble Supreme Court has said in respect of the balance of 65% vacancies, invitation of applications by open advertisement by following the usual procedure for filling up vacancies in the University service should be made. The casual employees of R.A.U. who will not be absorbed against 35% reserved quota as indicated herein before, will be entitled to apply to the said 65% posts and for this some weightage is to be given as spelt out in the judgment.

In the hearing held today the University has



explained that in compliance with the order of the Hon'ble Supreme Court, some vacancies have already been filled up by the University, but has conceded that some vacancies still remain to be filled up. According to the University, the number of posts calculated on the basis of 35% of the total vacancies in Class-III was 212 and in Class-IV was 128, out of which 80 persons were appointed in Class-III and 97 persons appointed against class-IV. This means that 132 vacancies in Class-III and 31 vacancies in Class-IV are yet to be filled up. In the same way, the number of posts calculated on the basis of 65% of the total vacancies in Class-III was 272 and in Class-IV – 181, out of which, 178 persons were appointed in Class-III and 170 persons were appointed in Class-IV.

The University has clarified that in the remaining 132 vacant posts against 35% quota, 68 posts are unreserved and the rest are reserved for different categories. The same is the case with the 65% quota also. This is a serious deficit in the implementation of the Supreme Court's order. I am surprised that even after a lapse of about 8 years, the judgment and direction of the Hon'ble Supreme Court has not been complied with by the University. The University is directed to fill up all the vacant posts as mentioned above immediately."

6. In spite of that, the order was not complied with. A large number of persons approached this Court by filing C.W.J.C. No.5774 of 200 and other analogous cases. This Court vide

13.04.2007 dispose of the said writ application and directed to constitute a committee to find out who were eligible persons for regularization. It will be useful to quote some relevant paragraphs of the said order passed by this court, which read as under:-

“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 respondents:-

(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 will evolve its own modality and modus operandi 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 43 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 exercise of regularization, 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 by the Committee.

(7) Until the Committee concludes its process and exercise directed herein above, the status quo in respect of the petitioners obtainable as on today, is directed to be maintained."

7. The concerned authority examined the case of the petitioner and recorded that the petitioner was not engaged against the sanctioned post, was discharging the duty as casual / contractual labourer since 3.2.1990 till the date of the order passed. Further, said



that there is no provision for regularization of service of casual/contractual labour against the sanctioned post without following the process of appointment. As per the norms the appointment can be made after following the due process and accordingly, the claim of the petitioner for regularization was rejected by the Director, Administration, vide order dated 24.4.2008.

8. Ultimately, The Bihar Agriculture University in terms of the order of the Chancellor and the order passed in L.P.A. issued an advertisement for different posts. In the advertisement, it has been stated that those who are working as casual worker upto 50 years of age will be entitled to the benefit of the weightage. The petitioner has also applied for the same, but has been refused to grant the weightage, which he is entitled in terms of the direction given by the Hon'ble Supreme Court.

9. Learned counsel for the petitioner submits that the petitioner has worked upto 2001 as casual labour and thereafter it was substituted by appointment on contractual basis. The period what he has discharged as contract worker be excluded even than he is entitled to the weightage of 2% marks for each completing years of service for the period for 1992 to 2003, but he has been

deprived of the benefit and the University authority has wrongly been rejected the claim of the petitioner.

10. Learned counsel for the University and learned counsel for the private respondent submit that the petitioner is not entitled to the benefit of any weightage in terms of the advertisement as those who are working as casual workers were only be entitled to the benefit of weightage not to the persons who had discharging the duty on contract basis.

11. In this case, one fact has brought to the notice of this Court that some persons have played mischief in the sense that the services of the petitioner has dismissed on the ground that the present application has already been rejected, which is completely incorrect and required an inquiry by the authority concerned and take stern against him/them.

12. Be that as it may, the present case moving around about the entitlement of weightage to the petitioner as claim has been made by the petitioner that upto 2001 he discharged the duty as casual employee and from 2001 he was made a contractual worker. On perusal of the letter dated 26.04.2008 (Annexure-7 of this writ application) it appears that the Committee has considered



the fact that the present petitioner is a casual labour, which is apparently clear from para-2 of the said letter and in all place the word used casual/contractual labourer and particularly in para No.4, it has been mentioned that the University is going to advertise the vacant posts under 65% quota as per Hon'ble Chancellor's direction and the petitioner will be at liberty to apply for appointment. Annexure-13 (series), of this writ application, is a certificate issued by Sanjay Gandhi Institute of Dairy Technology, treating the petitioner as casual staff working in the said organization. So, even the petitioner was appointed on contract basis, he was treated to be a casual employee.

13. Let us examine the terms of the advertisement dated 31.10.2012. At the end of the first paragraph of the advertisement, it provides that 'बिहार कृषि विश्वविद्यालय, सबौर के अधीनस्थ इकाईयों में कार्यरत आकस्मिक श्रमिकों के लिए 50 वर्ष होना चाहिए।'

14. The advertisement only provides the maximum age limit of different categories of persons can apply for appointment and for casual employee it has been enhanced to 50 years. It does not qualify or stipulates or explains for granting any weightage to the person in terms of the direction of the Hon'ble Supreme Court. It is only Hon'ble Supreme Court's order mentions that those who



are working as casual worker will be given the benefit of regularization subject to the 15 years of satisfying service and those who could not be regularized in service; they can appear in the selection under the 65% quota. The Hon'ble Supreme Court has said that those who have worked for one year will be entitled to weightage of 2% marks upto maximum 30%. Here is the question whether the petitioner has rightly been deprived or wrongly been deprived from granting the benefit of weightage.

15. The casual worker is the person who discharges the duty and whose name is there in the muster roll of the Company or the organization. There may be a contract of service or there may be a contract for service. In contract for service, the person comes through contractor, but in contract of service, the person was employed by the employer.

16. In the present case, it is not a case of contract for service, but it is a case of contract of service. The status of those who are appointed on contract/ casual / daily wagers having no certainty of service, but those who are in a contract of service for period mentioned in the letter have certainty of service for the period mentioned in the contract and the person who are in contract of service for period mentioned are placed better than those who

are casual workers.

17. This Court in the case of ***Sudhir Prasad Singh & Ors. vs. Rajendra Agriculture University, Pusa, Samastipur & Ors.*** reported in ***2000(3) PLJR, 765***, where this Court has held that those who were working either for short period or for limited period or for temporary period, person includes the ad-hoc employees engaged on fixed wages and those who are being paid from contingencies such employees are entitled to the benefit of casual employee in terms of direction of Supreme Court passed in S.L.P. No.18594 of 1994 and they are entitled to marks for their experience of services.

18. It will be relevant to quote paragraph Nos. 7 and 8 of the said judgment, which reads as under:-

*“7. The question of regularization of services of casual employees also fell for consideration before the Supreme Court in the case of **State of Haryana vs. Piara Singh** (AIR 1992 S.C. 2130). Therein the Court took into consideration the concept of adhoc employees, work charge employees, casual workers, daily rate employees and temporary employees and after dealing the circulars of Government of India and scheme, held that the same includes all such employees who are not regular. The definition of “employees’ has been laid down under the Rajendra Agricultural University, Bihar Statutes,*

which mean ‘ whole time employees’, other than part time employees or those paid from contingencies.

Thus, the ‘casual employee’ not only means daily wage employee/ muster roll employee but also includes other employees who are not regular; whose employment is for short period or for limited/temporary purpose, including the limited/temporary purpose including the adhoc employees, employees engaged on fixed wages and those who are being paid from contingencies.

8. In the circumstances, the petitioners having engaged by way of stop-gap arrangement, on fixed wages to perform duty of one or other post under the University and not being regular employees, they are entitled to the benefits of casual employees in terms with the direction of the Supreme Court dated 18.2.1998 passed in S.L.P. (Civil) no. 18594/94. they are also entitled for marks for their experience, interms with the aforesaid direction of the Supreme Court for the period they have performed such duty.”

19. This judgment of Rajendra Agriculture University (supra) completely gives answer in favour of petitioner. On perusal of the same, it is very much clear that whatever the form of employment but if a person was in employment either of any nature, will be entitled to the weightage for the appointment.

20. The judgment of the Supreme Court has been understood by the respondent authorities *de hors* to its meaning and subject as the Hon’ble Supreme Court has used the word as casual



in a generic sense but not in a specific sense and it will be understand that those who are working not in a permanent cadre, but discharging the duty either in the form of daily wager, casual worker, ad-hoc or on contractual, as has been envisaged to be given the benefit of the weightage and they cannot be deprived on account of the fact that they were not discharging the duty on casual basis rather on contract basis. It is also very much clear that at least, the university should have granted the benefit for the period, the petitioner he has discharged the duty as casual and he cannot be deprived merely because on the day the advertisement was published, he was discharging the duty on contract basis.

21. In such view of the matter, this Court is of the view that the petitioner is entitled to the weightage in terms of the judgment of the Hon'ble Supreme Court and has wrongly been deprived of the benefit of the weightage. In such circumstances, this Court directs the University to consider the case of the petitioner and if he qualifies for his appointment after granting the weightage, he must be given the benefit pushing down the person who is there already occupying the seat. The university is also directed to look upon the mystery about the termination of service, rectify the mistake and petitioner be brought to the service and so

much so the person concerned who has played the mischief should be punished in accordance with law.

22. 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	05/10/2016
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