

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.293 of 2016
IN
Civil Writ Jurisdiction Case No. 3078 of 2015**

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The State Of Bihar, through the Principal Secretary, Human Resources Development Department (now Education Department) Government of Bihar, New Secretariat, Patna

.... Respondent/Appellant/s

Versus

1. Ashok Kumar Shahi, son of Late Brij Mangal Prasad Shahi, resident of village + P.S. – Baruraj, District - Muzaffarpur

.... Petitioner/Respondent 1st Set.

2. B.R. Ambedkar Bihar University, Muzaffarpur

3. The Registrar, B.R. Ambedkar Bihar University, Muzaffarpur

4. The Vice Chancellor, B.R. Ambedkar Bihar University, Muzaffarpur

5. The Principal Ram Briksha Mahila College, Muzaffarpur.

.....Respondents/Respondents 2nd Set.

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Appearance :

For the Appellant/s : Mr. Anil Kumar Verma, AC to AAG 9

For the Respondent/s : Mr. Santosh Kumar Jha

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date: 21-12-2016

Re.: Interlocutory Application No.1119 of 2016

The application is for condonation of delay of 224 days in filing of the present Letters Patent Appeal.

For the reasons mentioned in the Interlocutory Application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.

Interlocutory Application stands allowed accordingly.



Re: Letters Patent Appeal

The present Letters Patent Appeal has been filed under Clause X of Patna High Court Rules against the order dated 18.5.2015 passed by the learned Single Judge in C.W.J.C. No. 3078 of 2015, disposing of the writ application with a direction to the State Authorities especially the Principal Secretary, Education, Government of Bihar that they will take steps for implementation of the recommendation of the 3-Members Committee dated 13.5.2013. The learned Single Judge further observed that so long the recommendation stands the State has no option but to implement the same. The respondents were further directed to decide the issue within a period of ten weeks from the date of production of a copy of the order. The operative part of the order of learned Single Judge reads as follows:

“3. The Court is satisfied that a direction is required to be issued upon the respondent State authorities, especially the Principal Secretary, Education, Government of Bihar, that they will take steps for implementation of the recommendation of the 3-Members Committee, contained in Annexure -2, dated 13.5.2013. So long this recommendation stands the State has no option but to implement it.

4. Let a decision be taken on the issue within a period of ten weeks from the date of production of a copy of this order.



5. Writ application is disposed of with above direction.”

The factual matrix of the case is that the respondent no. 1 was appointed by the Principal of B.R.B. Mahila College, a constituent college under B.R.A. Bihar University, on temporary basis as Assistant in pay scale of Rs.220-315 plus allowance as admissible under the Rule of the University. The college in question was affiliated to the university on 1.6.1978 and subsequently got constituent status in 1981 w.e.f. 1.10.1980. On 4.8.2007 the Principal of the college prepared a seniority list of non-teaching staff working in the college on temporary basis wherein the name of respondent no. 1 figured at sl. No. 1 as gets reflected from the seniority list contained in Annexure 1 to the writ application.

It is relevant to trace a brief chronological background with regard to dispute in issue. The writ petitioner earlier preferred C.W.J.C. No. 3875 of 2009 with a prayer for a direction to give full salary and allowance in the pay scale of Rs.220-315 revised from time to time. A learned Single Judge of this Court while disposing of the batch of writ applications including the above mentioned writ application of the petitioner (CWJC No. 8852 of 2006 Dr.



Manjuwala Singh and others. Vs. State of Bihar and others) tried to get the issue resolved with regard to the claim of the payscale of teaching and non-teaching staff of the University and appropriate direction was issued to the University to resolve the issue in consultation with the officials of the State Government but during hearing of the writ application, letter no. 319 dated 22.2.2012 was produced suggesting that the State Government has constituted a three men committee headed by Mr. V.S. Dubey, a retired IAS Officer for determining the claim of payment of arrears of all the teaching and non-teaching employees of different Universities of Bihar and thereby the learned Single Judge vide order dated 23.2.2012 allowed the prayer of learned counsel for the State for submitting Terms of Reference of the Committee and also the manner of its functioning. Thereafter, the Principal Secretary of the Education Department assured the learned Single Judge that the implementation of the decision taken by three men committee will either be made within eight weeks or the appropriate remedy as available in law, if necessary, will be taken against such decision of the Committee in the same period. Consequently, the learned Single Judge vide order/judgment dated 30.1.2013 directed the respondent no. 1 and others to file their compact claim within a period of four weeks before the three men Committee and the



Committee was directed to make endeavours to dispose of the claim of the respondent no. 1 within a period of three months from the date of filing of the claim. Paragraph 21 and 22 of the order dated 30.1.2013 reads as follows:

21.Counsel for the petitioners in these cases have agreed to file their compact claim within a period of four weeks from today before the three men Committee. The Committee thereafter shall make its all endeavors to dispose of such claim of the petitioners of these cases preferably within a period of three months from the date of filing of their claim.

22. It goes without saying that the three men Committee while either allowing or rejecting the claim shall pass a reasoned order within the aforesaid time frame and communicate it to the University as also to the concerned teaching/non-teaching employee.

It has further been observed by the learned Single Judge that three men Committee while either allowing or rejecting the claim shall pass a reasoned order within the aforementioned time frame and communicate it to the University as also to the concerned teaching or non-teaching employee. Paragraph 23 of the judgment clearly stipulates that the decision of three men committee will be implemented within two months or the



concerned persons will be informed within the same period about any remedy being availed by the State Government and/or any other aggrieved person against such order of the three men Committee. Paragraph 23 of the judgment reads as follows:

“23. Before parting with it is made clear that once a decision is taken in the case of the petitioners by the three men Committee the same shall be either implemented within a period of next two months or the petitioners in the same period will be informed about any remedy being availed by the State government and/or any other aggrieved person against such order of the three men Committee.”

Hence, in pursuance to the said direction of the learned Single Judge, the writ petitioner respondent no. 1 filed his claim before three men Committee. The three men Committee vide recommendation dated 13.5.2013 after hearing the State and considering the objections particularly the objection with regard to respondent no. 1, came to a conclusion that writ petitioner respondent no. 1 was appointed on the sanctioned post. Moreover, the sanctioned post is still available, hence his services can be regularized. The committee recorded its findings in paragraph 28,29 and 30 of its report. Consequently, in pursuance to a decision of the Vice Chancellor in the light of resolution of the Syndicate in



its meeting held on 8.2.2014, vide memo no. 348/R dated 24.2.2014 issued under the signature of Registrar of BRA Bihar University, the services of the writ petitioner respondent no. 1 was regularized on Class III post in R.B.B.M. College, Muzaffarpur w.e.f. 10.12.2012 though without any consequential financial benefits for his services rendered before 10.12.2012. The three men Committee held the writ petitioner respondent no. 1 senior to Sri Narayan Trivedi though the consequential financial benefit was not to be paid prior to the services of 10.12.2012. The Committee further directed to implement the recommendation within a period of three weeks. When three men committee recommendation was not implemented, the writ petitioner respondent no. 1 filed C.W.J.C. No. 828 of 2014 for regularization of the services against Class III post as also for declaration that the respondent no. 1 is senior to Narayan Trivedi.

Since the grievance of the writ petitioner respondent no. 1 was redressed by the University the aforementioned writ application was directed to be withdrawn vide order dated 25.2.2014. In the light of the regularization order of the Registrar of the University, the respondent no. 1 sent salary bill to the University but the payments were not made leading to filing of C.W.J.C. No. 3078 of 2015 which was disposed by the learned



Single Judge vide order dated 18.5.2015 with a direction to the respondents to implement the recommendation of the three men Committee within a period of ten weeks from the date of production of a copy of the order. Hence the present Letters Patent Appeal by the State of Bihar.

It is submitted by learned counsel for the Appellant that writ petitioner respondent no. 1 was initially appointed by an incompetent authority. The order of Sri V.S. Dubey committee for regularization of the writ petitioner was beyond the terms of reference to the said Committee.

It is submitted by learned counsel for the writ petitioner respondent no.1 that three men Committee was constituted by the State Government hence there was no occasion for the State Government not to implement the order of three men Committee. From the facts on record, it is apparent that the Committee was constituted by the State Government to device ways and means for making payment to the teaching and non teaching staff. The learned Single Judge vide order dated 26.4.2012 passed in C.W.J.C. No. 3875 of 2009 directed the writ petitioner respondent no. 1 to file his claim before the committee wherein the writ petitioner respondent no. 1 claimed his regularization also and the said order has never been challenged by the State. The order dated 30.01.2013 (contained in



Annexure A to the counter affidavit of Respondent no. 5) of the three men Committee passed on 13.5.2013 was also not challenged. The procedure of implementation of three men Committee's order was stipulated in paragraph 23 of the judgment of learned Single Judge dated 30.1.2013 to the effect that the decision of the three men Committee will be either implemented within a period of next two months or the writ petitioner respondent no. 1 within the same period will be informed about any remedy being availed by the State Government and/or any other aggrieved person against such order of the three men Committee but neither such information was given nor any remedy was availed by the State Government.

Considering the rival submissions of the parties, we are of the view that the counter affidavit in the writ application (C.W.J.C. No. 3078 of 2015) was filed on behalf of Respondent nos. 1 to 4 which includes the Vice Chancellor, Registrar and the Principal of the college in question where it has been stated that the University regularized the services of the respondent no. 1 with effect from 10.12.2012 and the for the said purpose budget were prepared by the University and sent to the State Government for its approval. The objection with regard to the initial entry of the respondent no. 1 which was pleaded in the counter affidavit filed on behalf of respondent no. 5 and was also taken before the three men Committee but since the



State Government did not choose to challenge the order dated 30.01.2013 of the writ court i.e. (C.W.J.C. No. 3875 of 2009 Ashok Kumar Sahi Vs. State of Bihar & Ors.) the recommendation/order/ of the three men Committee or the resolution of the University and thereby the State Government has waived its right to raise any objection, hence we find no infirmity in the order of the learned Single Judge.

This Letters Patent Appeal is, accordingly, dismissed.

(Hemant Gupta, ACJ)

Anil/-

(Dinesh Kumar Singh, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	

