

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9450 of 2013

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Bishwa Mohan Kumar Son Of Sri Bachan Singh At Present Posted As Office Assistant In Raj Narayan College, Hajipur, District- Vaishali

.... Petitioner/s

Versus

1. The University Of Bihar Through Registrar Bra Bihar University, Muzaffarpur
2. The Vice-Chancellor, B.R.A. Bihar University, Muzaffarpur
3. The Principal Raj Narayan College, Hajipur, District- Vaishali
4. The State Of Bihar Through Principal Secretary, Education Department, Government Of Bihar, Patna
5. The Director Higher Education, Education Department, Government Of Bihar, Patna
6. The Secretary Higher Education, Education Department, Government Of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Hemendra Pd. Singh, Sr. Adv. Mr. Shashi Bhushan Kumar, Adv.
For the University	:	Mr. Dhruva Mukherjee, Sr. Adv. Mr. Ganesh Singh, Adv.
For the State	:	Mr. Pankai Kumar, SC-12

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 05-08-2016

Heard learned counsel for the parties.

In this case, a prayer has been made for shifting the date of regularization from 1.2.1995 to 1.2.1978.

A claim has been made that the petitioner was regularly appointed after facing the competition, his date of regularization cannot be different and shifted to his prejudice when the University as well as Principal of the college always treated him to have been appointed for all purpose on and from 1.2.1978.



The brief fact of this case is that the petitioner was appointed as Office Assistant in the Raj Narayan College, Hajipur, Vaishali after facing test and interview, accordingly he joined the post on 1.2.1978 but, the Vice Chancellor of the University approved the service of the petitioner and many others vide letter dated 6.3.1980 which is apparently clear from the letter of the Principal of the College dated 22.12.1979 (Annexure-2) wherein it was specifically mentioned that the appointment of the petitioner and others have been made against the sanctioned post and they were selected after facing due process of selection and the letter dated 31.3.1980 of the Principal of the college shows that the selection was approved by the Vice Chancellor of the University, requested for issuance of notification. When the petitioner could not get a fruitful result, he himself filed a representation on different dates to the Vice Chancellor, Bihar University, Muzaffarpur giving details of the fact, apparently clear from the representations (Annexure-3 & 5 Series). The petitioner was getting a regular pay-scale but, the pay of the petitioner was stopped with effect from March, 1984. He tried to find out the reason for stoppage of his salary, when on representation he could not get proper response, the petitioner approached this Court in CWJC No. 2731 of 1987. This Court considered the case of the petitioner and disposed of the same in the following terms:-



"6. Since Mr. Indu Prasad Sinha appearing the University has submitted that under the facts and the circumstances of the case the petitioner should pursue his remedy of filing representation before the Vice-Chancellor under section 9(4) of the Act, keeping in view the aforesaid facts and circumstances, the petitioner, if so advised, may file representation before the Vice-Chancellor for redressal of his grievance. If any such representation is filed the same should be disposed of preferably within a period of four months from the date of filing of the same in accordance with law. With these observations the writ application is disposed of. There will be no order as to cost."

The order of the learned single Judge was challenged in LPA being LPA No. 60 of 1991 and the Hon'ble Division Bench, by order dated 27.11.1991, upheld the order passed by the learned single Judge dated 25.4.1991. The University, on consideration of the order passed by this Court in CWJC No. 2731 of 1987, regularized the services of the petitioner with effect from December, 1995 vide letter dated 20.1.1997(Anneure-11). The petitioner filed a representation on 3.2.1998 and on 26.10.2012 for payment of salary at par with the others.

Learned counsel for the petitioner has submitted that the petitioner has wrongly been deprived of being regularized in service from the date of his appointment, the University has wrongly absorbed the petitioner from 1.12.1996 instead of treating from

1.2.1978 and sought a relief that the University be directed to make necessary correction in the letter of his regularization dated 20.6.1997.

The University has raised two grounds stating that there is delay of about 16 years, submitted that the services of the petitioner was regularized from 1.12.1996 vide order dated 20.1.1997 but, the petitioner did not challenge the same and now he cannot raise a grievance of shifting of date of regularization after long lapse of time as it will be treated the petitioner is/was satisfied with the date. Further a point has been raised that there was no post of Office Assistant, in such a situation, the appointment of the petitioner was per se illegal but the resolution of the State Government (Annexure-B/B) postulates that employees having been appointed on the post which is not available but fall under the staffing pattern will be adjusted against the future vacancy.

Learned counsel for the petitioner has contradicted the argument stating that he had filed representations which was required to dispose of by the University. When the representations of petitioner remained pending, in such circumstances, the plea of ground of delay and laches is not sustainable. In support of the submission, learned counsel for the petitioner has placed reliance on the judgment in the case of *G.P. Doval & Ors. Vs. Chief Secretary, Govt. of U.P. & Ors.* reported in *AIR 1984 SCC 1527*, further stated that the submission of the



University that no post of Office Assistant was there is completely factually wrong in view of the fact that other persons, namely, Rajiv Kumar Singh and Prem Shankar Singh were appointed as an Office Assistant and they were regularized in the service from their respective date of appointment. In such circumstances, the objection raised by the learned counsel for the University that the petitioner was appointed against the leave vacancy is not sustainable. He has further submitted that Rajiv Kumar and Prem Shankar Singh were appointed after the petitioner has been shown to have been regularized from the respective date of appointment and same treatment should be given to the petitioner.

After considering the rival contentions of the parties, this Court finds that the petitioner had earlier moved this Court in CWJC No. 2731 of 1987, there the Court disposed of the matter with certain observation and, thereafter, the petitioner was absorbed in service with effect from 1996 i.e. 16 years earlier. On perusal of the representation, it does not disclose that the petitioner has ever raised any grievance that he was wrongly been regularized from 1996. The two representations, annexed with this writ application, do not show from any angle that the petitioner had ever raised the grievance with regard to fixation of wrong date of regularization. In such a situation, the judgment cited by the petitioner has no application in the present

case and this Court, after the lapse of sixteen years of cause of action, would not entertain such a belated writ application.

In the result, this writ application is dismissed on the ground of delay and laches.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
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