

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.109 of 2015

IN

Civil Writ Jurisdiction Case No. 4477 of 2007

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1. Vice Chancellor, B.R.A. Bihar University, Muzaffarpur through its Registrar, Sri Vivekanand Shukla, son of Late Jamuna Shukla, Resident of Hanuman Nagar, Lane No. 1, Madipur, Gobarshahi Road, P.S.- Kazimuhammadpur, District- Muzaffarpur

2. The Finance Officer, B.R.A. Bihar University, Muzaffarpur

3. Registrar, B.R.A. Bihar University, Muzaffarpur

.... Petitioner/s

Versus

1. Smt. Shail Kumari wife of Late Dr. Amrendra Kumar 'Amar' resident of Mohalla- Machhali Gali, Near Laxmi Market, Sant Sadan, P.S.- Jakkampur, District- Patna

2. The Principal, R.L.S. Yadav College, Bettiah

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
CAV JUDGMENT

Date: 09 -08-2017

1. This review petition has been filed by the Vice-Chancellor, BRA Bihar University, Muzaffarpur and its officials, who were respondents in C.W.J.C. no. 4477 of 2007, for review of order dated 2.4.2014 passed in above stated C.W.J.C. no. 4477 of 2007 on the ground that there was apparent mistake on the face of the record as vide order dated 2.4.2014 this court has directed the respondents of C.W.J.C. no. 4477/2007 to calculate the service of husband of opposite party no.1 who was petitioner in C.W.J.C. no. 4477/2007 from 30.12.1983 for the purpose of calculation of his gratuity and earned leave etc.

2. Opposite party no.1 writ petitioner filed C.W.J.C. no.



4477 of 2007 for issuance of writ of mandamus directing the petitioners to grant pay arrears of gratuity at the revised rate, entire amount of unutilized earned leave, group insurance, GPF and family pension etc. The aforesaid writ petition was allowed vide order dated 2.4.2014 directing the petitioners of this petition to make ensure payment of dues arrears of salary of husband of opposite party no.1 and also make payment of remaining amount of gratuity and leave encashment and statutory interest. However, at para 13 of the aforesaid order, this court observed that length of service of husband of opposite party no.1 ought to have been reckoned from his first joining that is from 30.12.1983.

3. The petitioners are aggrieved by the aforesaid observation which was made at para 13 of order dated 2.4.2014 passed in C.W.J.C. no. 4477 of 2007 on the ground that husband of opposite party no.1 was appointed as lecturer on temporary basis on 03.12.1983 and joined in the department of Home Science in Ramlakhan Singh Yadav College, Bettiah on 04.12.1983 but post of the lecturer in the department of Home Science in Ramlakhan Singh Yadav College, Bettiah was sanctioned on 01.02.1988 and prior to that post of lecturer in Home Science department of Ramlakhan Singh Yadav College, Bettiah was not sanctioned and, therefore, retiral benefit of husband of opposite party no.1 can only be reckoned from 01.02.1988 that is from the date of sanction of post.

4. Learned counsel appearing for the petitioners submitted that, as a matter of fact, Ramlakhan Singh Yadav College, Bettiah was converted into a constituent unit of BRA University on 19.5.1987 and



cut off date in the agreement between the aforesaid college and University was determined on 30.4.1986. He further submitted that department of Human Resources, Government of Bihar gave list of sanction post of teachers working against said post vide letter no 181 C dated 18.12.1989 and their recommendation for sanction of post and there was no sanctioned post available in the department of Home Science in Ramlakhan Singh Yadav College, Bettiah in the aforesaid letter 181C dated 18.12.1989 and in the aforesaid recommendation, cut off date was fixed as 30.4.1986 and, as a matter of fact, recommendation for sanction of two posts in the department of Home Science was received by the State Government after cut off date that is after 30.4.1986. He further submitted that enquiry report of Justice S.C. Agarwala Commission also noted this fact that there was no sanctioned post of teachers in the department of Home Science in Ramlakhan Singh Yadav College, Bettiah at the time of conversion of the aforesaid college and the aforesaid committee placed husband of opposite party no.1 in R-I category. However, after passing order of Hon'ble Supreme Court in Civil Appeal no 6098 of 1997 (State of Bihar & ors vs. Bihar Rajya M.S.E.S.K.K.Mahasang and ors), the then Vice Chancellor, by notification dated 9.4.2005 in anticipation of approval of Syndicate, observed to regularize services of several lecturers of Ramlakhan Singh Yadav College, Bettiah from the date as mentioned against their names and name of husband of opposite party no.1 was found figured at serial no. 48 and his service was regularized from 01.02.1988. He further submitted that unfortunately, the aforesaid documents could not be brought before this court while



passing order dated 2.4.2014 in C.W.J.C. no. 4477 of 2007 and that was the reason, this court observed at para 13 of order dated 2.4.2014 in C.W.J.C. no. 4477 of 2007 that service of husband of opposite party no.1 ought to be reckoned from the date of his first joining i.e. 30.12.1983.

5. He further submitted that husband of opposite party no.1 was not working on a substantive capacity prior to 01.02.1988 and for all purposes of retirement benefit, qualifying service is to be considered service rendered as member of the staff of the University in a substantive capacity. To fortify the aforesaid contentions, he drew my attention towards the provision contained in Appendix A of section 2 Clause 41.1(1) of Chapter XV of the Statute. He further submitted that no doubt, University ought to have brought the aforesaid fact and documents on record before this court at the time of passing order dated 2.4.2014 in C.W.J.C. no. 4477 of 2007 but court has wide power to correct the error apparent on the face of record exercising its power of review. He relied upon decision of **Haryana State Industrial Development Corporation Limited vs. Mawasi and others reported in (2012) 7 SCC 200** as well as decision of **S. Nagraj & others vs. State of Karnataka & another reported in 1993 Supp. (4) SCC 595**.

6. On the other hand, learned counsel appearing for the opposite party refuted the above stated submissions arguing that no doubt, court can review its own order but the power of review is very limited and lies only to correct patent error on the record. He further submitted that power of review may be exercised on the discovery of



new important matter or evidence which after exercising due deliberation was not within the knowledge of person seeking review and could not be produced by him at the time when the order was made and furthermore, it may be exercised where some mistakes or errors apparent on the face of the record are found but in the present case, admittedly, University failed to bring the aforesaid documents as well as facts on record though the aforesaid documents as well as facts were within the knowledge of the University. Therefore, this review petition is liable to be rejected.

7. Having heard the contentions of both parties. The facts, as raised by the University in this review petition, are not in dispute. It is not in dispute that husband of opposite party no.1 was appointed as lecturer on 30.12.1983 and it is also not in dispute that he was regularized on 01.02.1988. It is also not in dispute that when Ramlakhan Singh Yadav College, Bettiah was converted into a constituent unit of the University and cut off date was determined as 30.4.1986, there was no sanctioned post in Home Science department of Ramlakhan Singh Yadav College, Bettiah and after cut off date, the post in Home Science department of Ramlakhan Singh Yadav College, Bettiah was sanctioned. Therefore, it is admitted factual position that husband of opposite party no.1 was working on an unsanctioned post when the aforesaid college became constituent college of the University. It is also an admitted position that the aforesaid college was converted into constituent college of BRA University with effect from 19.5.1987 and post of lecturer in Home Science department of Ramlakhan Singh Yadav College, Bettiah was



sanctioned by the Government of Bihar on 01.02.1988 and the aforesaid date was taken for regularization of the service of husband of opposite party no.1.

8. No doubt, the aforesaid documents as well as facts were not brought on record by the University though the aforesaid documents were in possession of the University but since the aforesaid facts are admitted facts and it is apparent from perusal of para 13 of order dated 2.4.2014 passed in C.W.J.C. no. 4477 of 2007 that this court directed the University to reckon the length of service of husband of opposite party no.1 from 30.12.1983, in my view, the aforesaid error is apparent on the face of the record and no roving enquiry is needed to find out the aforesaid facts. Therefore, this review petition is liable to be allowed.

9. Accordingly, this review petition is allowed and para 13 of the order dated 2.4.2014 passed in C.W.J.C. no. 4477 of 2007 is rectified to this extent that length of the service of husband of opposite party no.1 shall be reckoned from 01.02.1988 instead of 30.12.1983 and in the aforesaid manner, this review petition stands disposed of.

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(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
CAV DATE	11.1.2017
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