

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 8786 of 1996

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1. Lakshmeshwar Singh, Son of Ramashray Singh, resident of Village - Bishunpur, Police Station -Mahua, District -Vaishali.
 2. (i) Thakur Pandey, Son of Late Parash Nath Pandey, resident of Village-Jurakan, Police Station - Husainganj, District -Siwan.
(ii) Manan Pandey, Son of Late Parash Nath Pandey, Resident of Village-Jurakan, Police Station-Hussainganj, District-Siwan.
 3. (i) Krishan Pratap Singh, Son of Late Yogendra Singh, Resident of Village-Sarharwa, Police Station-Darauli, District-Siwan.
 4. Ramsubhag Gond, Son of Manager Gond, resident of Sarharwa, Police Station-Darauli, District-Siwan.
 5. Janak Singh, Son of Shri Badshah Singh, resident of Village- Sarharwa, Police Station-Darauli, District-Siwan.
 6. Lallan Prasad Singh, Son of Sahdev Singh, resident of Village-Kharadara, Police Station-Asaon, District-Siwan.
 7. Durgesh Kumar Singh, Son of Sri Kauleshwar Singh, resident of Village-Rawatpaar Amethi, Police Station-Laar, District-Deoria (Uttar Pradesh).
 8. Makeswar Nath Singh, Son of Shri Rajendra Singh, resident of Village-Dhatingara, Police Station-Thawe, District-Gopalganj.
 9. Lallan Singh, Son of Shri Ram Aadhar Singh, resident of Village - Renua, Police Station-Siwan, District-Siwan.
 10. Ramashankar Singh, Son of Ram Ekbal Singh, resident of Village-Garar, Police Station-Andar, District-Siwan.

.... Petitioner/s

Versus

1. Jai Prakash University, Chapra through its, Vice-Chancellor.
2. The Principal, Raja Singh College, Siwan.

.... Respondent/s

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with

Civil Writ Jurisdiction Case No. 8849 of 1998

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1. Jagat Ram, Son of Doma Ram, Resident of Village-Chakara, Police Station- Siwan Muffasil, District-Siwan.
 2. Hari Mohan Singh, Son of Nand Kumar Singh, resident of Village-Enai, Police Station-Ravilganj, District-Saran.
 3. Satyadeo Singh, Son of Kawla Singh, resident of Village-Salahpur, Police Station-Andar, District-Siwan.
 4. Hardeo Singh, Son of Ramsabad Singh, resident of Village-Salahpur, Police Station-Andar, District-Siwan.
 5. Subhash Chandra Singh, Son of Ramayan Singh, Resident of Village-Chakara, Police Station-Siwan Muffasil, District-Siwan.
 6. Kamakhya Narain Singh, Son of Dasharath Singh, resident of Village-Sarharwa, Police Station-Siwan Muffasil, District-Siwan.
 7. Om Prakash Singh, Son of Vindhychal Singh, resident of Village-Repura, Police Station-Ziradei, District-Siwan.



- 8. Manoj Kumar Singh, Son of Vidya Singh, resident of Village-Pratappur, Police Station-Hussainganj, District-Siwan.
- 9. Parashuram Singh, Son of Janki Singh, resident of Village-Narharpur, Police Station, Basantpur, District-Siwan.
- 10. Jai Mangal Singh, Son of Ram Kripal Singh, resident of Kopa, Police Station-Kopa, District-Saran.
- 11. Sakaldeo Singh, Son of Lakhraj Singh, resident of Village-Salahpur, Police Station-Andar, District-Siwan.
- 12. Vijay Kumar Singh, Son of Daroga Singh, resident of Village-Chakara, Police Station-Siwan Muffasil, District-Siwan.
- 13. Yamuna Singh, Son of Laxmi Narayan Singh, resident of Village-Pratappur, Police Station-Hussainganj, District-Siwan.
- 14. Ganga Sagar Singh, Son of Laxmi Narain Singh, resident of Village-Pratappur, Police Station-Hussainganj, District-Siwan.
- 15. Mandeo Singh, Son of Ram Ekbal Singh, Resident of Village-Renuwan, Police Station-Hussainganj, District-Siwan.
- 16. Man Singh, Son of Ramagi Singh, resident of Village-Sawana, Police Station-Maharajganj, District-Siwan.
- 17. Vijay Kumar Singh, Son of Jagarnath Singh, resident of Village-Tetara, Police Station-Mairwa, District-Siwan.
- 18. Dwarika Prasad Singh, Son of Ramayan Singh, resident of Village-Bhaishwara, Police Station-Raghunathpur, District-Siwan.
- 19. Arun Kumar Singh @ Arun Singh, Son of Ramayan Singh, resident of Village-Renuwan, Police Station-Hussainganj, District-Siwan.

.... Petitioner/s

Versus

- 1. The Jai Prakash University, Chapra through its Vice-Chancellor.
- 2. The Principal, Raja Singh College, Siwan.
- 3. The State of Bihar.

.... Respondent/s

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Appearance :

(In CWJC No.8786 of 1996)

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| For the Petitioner/s | : | Mr. Janardhan Prasad Singh, Sr. Advocate and
Mr. Shubh Narayan Singh, Advocates |
| For the State | : | Ms. Shilpa Singh, GA 12 with
Mr. Ram Vinay Pd. Singh, AC to GA 12 |
| For the University | : | Mr. Anjani Kumar, Sr. Advocate with
Mr. Nagendra Kumar Singh, Advocate |

(In CWJC No.8849 of 1998)

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| For the Petitioner/s | : | Mr. Janardhan Prasad Singh, Sr. Advocate and
Mr. Shubh Narayan Singh, Advocates |
| For the University | : | Mr. Anjani Kumar, Sr. Advocate with
Mr. Nagendra Kumar Singh, Advocate |

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH



ORAL JUDGMENT

Date: 03-05-2018

Heard Mr. Janardhan Prasad Singh, learned senior counsel along with Mr. Shubh Narayan Singh, learned counsel for the petitioners and Mr. Anjani Kumar, learned senior counsel along with Mr. Nagendra Kumar Singh, learned counsel for J. P. University (hereinafter referred to as the 'University').

2. The petitioners had initially moved the Court for a direction to absorb their services permanently from the day the College was taken over as a constituent unit of the University and thereafter to treat them as regular from the day they were appointed by the Governing Body and for consequential benefits of payment of entire arrears of salary etc. During the pendency of the writ petition, the Vice Chancellor of the University, pursuant to the liberty given to the petitioners to file a representation before him, and the same being done, had passed orders on 01.05.2015 and 22.06.2015, rejecting their claim, which was also assailed in the present writ petition by way of an Interlocutory Application which has been allowed. Thus, in essence, today, the prayer is for setting aside orders dated 01.05.2015 and 22.06.2015 of the Vice Chancellor of the University holding the claim of the petitioners to be inadmissible.

3. The petitioners were appointed on posts which were



created in the year 1976, in terms of the decision of the Governing Body of Raja Singh College, Siwan (hereinafter referred to as the 'College') in December, 1976. The College initially was affiliated to the then B. R. A. Bihar University in the year 1971 and with effect from 01.03.1981 became a constituent unit of the said University. Later, due to creation of the present University, the College is now a constituent unit of J. P. University, Chapra.

4. Learned counsel for the petitioners submitted that the impugned order is erroneous for the reason that first of all, the post on which the petitioners have been appointed having been created by the Managing Committee at the point of time when the College was affiliated, was well within the power and jurisdiction of the Managing Committee of an affiliated College. It was submitted that once the posts were there, for filling up the same, a procedure was adopted by way of an advertisement, though on the local blackboard and pursuant thereto, the petitioners were appointed and joined on their respective post and, thus, at the time the College was taken over, their names were shown in the list of employees sent to the University/Government by the College. Learned counsel submitted that the communication of the University itself would indicate that 48 posts were available under the Staffing Pattern and deemed to be sanctioned principle, which has been approved by the Full Bench of



this Court in the case of **Braj Kishore Singh v. State of Bihar** reported as **1997(1) PLJR 509**. It was further submitted that the proposal by the University to the State Government to approve the service of the petitioners has also been wrongly rejected, especially in the background of the decision of the Full Bench of this Court in the case of **Braj Kishore Singh** (supra). Learned counsel submitted that the petitioners have also been discriminated, inasmuch as, similarly situated persons, who had also moved the Court in C.W.J.C. No. 8313 of 1999, have been granted the relief and, thus, the Court should interfere in the matter. Learned counsel submitted that in many matters, the case of the petitioners stands on a better footing than the petitioners in C.W.J.C. No. 8313 of 1999, especially as they had been appointed by the Principal whereas in the present case, they have been appointed by the Governing Body of the College which is the Appointing Authority.

5. Learned counsel for the University submitted that first and foremost, the parity sought by the petitioners showing similarity with the petitioners of C.W.J.C. No. 8313 of 1999 is misplaced as the distinction is quite apparent and has been specifically dealt with by the Vice Chancellor in his order dated 22.06.2015 where four specific counts have been stated. It was submitted that the said distinction has not been controverted by the petitioners to be unfounded. Learned



counsel submitted that in the present case, the moot question would relate to the appointment of the petitioners on posts which have been created by the Managing Committee and thereafter the mode and manner of their appointment on such created posts. It was submitted that the Managing Committee of an affiliated College seized to have any authority with regard to creation of post on coming into effect of the Bihar State Universities Act, 1976 (hereinafter referred to as the 'Act') as the posts on which the petitioners, except for petitioner no. 1 in C.W.J.C. No. 8786 of 1996, have been created only in December, 1976. It was submitted that such creation of post is hit by the bar of Section 35 of the Act. Learned counsel submitted that moving further, even the mode of appointment, clearly indicates that directly on the application made by the petitioners, they have been appointed, without there being any indication of any sort of procedure adopted or there being an open advertisement. Learned counsel submitted that with regard to there being an open advertisement or even constitution of any Selection Committee or procedure being followed neither having been brought on record nor any averment made to this effect in the entire pleadings, it is clear that such appointments cannot be said to be valid in the eyes of law. Learned counsel submitted that in view of the Full Bench judgment of this Court in the case of **Ram Sevak Yadav vs. State of Bihar** reported as **2013 (1) PLJR 964**,



such appointments made contrary to the mandate of Article 14 of the Constitution of India, without open competitive selection, are illegal appointment *void ab initio* and cannot be regularized under any circumstances, and further that the period of service is irrelevant. Learned counsel submitted that the same has also been approvingly taken note of by the Hon'ble Supreme Court in its judgment in **Civil Appeal No. 2356 of 2018** in the case of **Upendra Singh Vs. State of Bihar & Ors.** dated 23.02.2018. Learned counsel submitted that the transaction of appointment being itself patently without semblance of any procedure prescribed or known to law, the Court is not required to go into any other aspect, as the claim for any benefit or regularization or payment of arrears can only flow from a legal and valid appointment in the eyes of law, which is lacking in the present case.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the writ petitions. The claim for regularization and recognition of the service of the petitioners has to be viewed from the point of their entry into service being in a manner known to law. Only upon the same being established, consequences can follow, including there being post available and the entitlement of the employee for salary etc. In the present case, without going into



the debate as to whether the posts could be created by the Managing Committee or it was beyond the jurisdiction in terms of the Section 35 of the Act or even whether the matter would be affected by the principle laid down in the case of **Braj Kishore Singh** (supra), the Court, upon considering the basic and foremost issue with regard to the appointment of the petitioners, comes to the following conclusion. It has not been averred or any material brought on record to indicate that there was any open advertisement prior to the petitioners being appointed. Moving further, the next requirement of there being a Selection Committee constituted for such purpose has also neither been pleaded nor any material brought on record to show that the same was done. Thereafter, the stage would come that all applications received were to be put up before the Selection Committee and a procedure adopted for preparing a panel/selecting candidates for the posts advertised. On this also, the pleadings as well as the materials are totally silent. In fact, to the contrary, the appointment letters clearly state that in terms of the application received from the petitioners, they were being appointed on various posts. In the background of such material being on record, to which nothing contrary has also been pleaded or brought on record, the Court would not hesitate in holding that the appointments were totally illegal and, thus, *void ab initio* in terms of the settled law as expounded in the



Full Bench decision of this Court in the case of **Ram Sevak Yadav** (supra) which has been approvingly relied upon by the Hon'ble Supreme Court in the case of **Upendra Singh** (supra), in which the Hon'ble Supreme Court has held as under:

“7) After considering the respective arguments, we are of the view that the impugned judgment is without any blemish and no interference is called for. In fact, whole premise on which the case is founded by the appellant seems to be incorrect. We note that the cases of these persons, including the appellant, were duly considered by the University, on the basis of which order dated August 13, 2003 were passed refusing regularisation. This order specifically states that the initial appointment of the appellant and others was not in accordance with law. It was made without advertisement and there was no recommendation of panel by the Selection Committee. So much so, the appointments were not made by the competent authority. We find that the University, or for that matter, the Government had agreed to regularise the services of those employees of the colleges, which had become the Constituent Colleges, only on the condition that their initial appointment was after following the due procedure and that too against the sanctioned post. A statement was made at the Bar by learned counsel for the respondent that there were no sanctioned posts even now.



8) Law pertaining to regularisation has now been authoritatively determined by a Constitution Bench judgment of this Court in *Secretary, State of Karnataka & Ors. v. Umadevi & Ors.*, (2006) 4 SCC 1. On the application of law laid down in that case, it is clear that the question of regularisation of daily wager appointed contrary to law does not arise. This ratio of the judgment could not be disputed by the learned counsel for the appellant as well. That is why she continued to plead that the appointment of the appellant was made after following due procedure and in accordance with law. However, that is not borne from the records. Pertinently, order dated August 13, 2003, vide which the appellant was refused regularisation on the aforesaid ground was not even assailed by the appellant at that time. It may be mentioned that in *Uma Devi*, the Court left a small window opened for those who were working on ad hoc/ daily wage basis for more than ten years, to regularise them as a one-time measure. However, that was also subject to the condition that they should have been appointed in duly sanctioned post. Further, while counting their ten years period, those cases were to be excluded where such persons continued to work under the cover of orders of the courts or the tribunal. The High Court has, in the impugned judgment, discussed these nuances and has also referred to the judgment in *Uma Devi* and held



that the benefit of one-time measure suggested in that case could not be extended to the appellant because of the following reasons:

“The Appellants clearly fall in the exception noticed in paragraph-53 of Umadevi (supra) as their claims were sub judice on the date the pronouncement of the Constitution Bench was made in view of pendency of C.W.J.C. No. 12235 of 2005 disposed subsequently on 29.08.2006. Such litigious continuation in employment stands excluded from the directions of Umadevi.

The Appellants claim to have been regularized within the staffing pattern. In our opinion, it is not the crux of the matter. The crucial question is if their initial appointment by the Managing Committee was in consonance with [Article 14](#) of the Constitution of India by open advertisement and competitive merit selection. On account of various interpretations by more than one Bench of M.L. Kesari (supra) reference was made to the Full Bench. We have already noticed from the order refusing regularization dated 13.08.2003 that the appointment of the Appellants on daily wage was not in consonance with the law.

The conclusion in Ram Sewak Yadav (supra) at paragraph 43 is as follows:



“43 (A) Uma Devi (supra) prohibits regularization of daily wage, casual, ad-hoc, and temporary appointments, the period of service being irrelevant;

(B) An illegal appointment void ab initio made contrary to the mandate of [Article 14](#) without open competitive selection cannot be regularized under any circumstances.

(C) Irregular appointments can be regularized if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with [Article 14](#) of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

(D) The appointment must not have been an individual favour doled out to the appointee alone and he person must have continued in service for over ten years without intervention of any court orders.”

7. Once the Court holds that initial entry on the posts held by the petitioners is totally contrary to law and, thus, unsustainable and under no circumstances fit to be regularized, no right can accrue to the petitioners based on such appointment. Thus,



the Court is not going into the merits and other points raised by the parties.

8. For the reasons aforesaid, the writ petitions fail and accordingly stand dismissed.

(Ahsanuddin Amanullah, J)

Anjani/-

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