

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.11 of 2012

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Binay Kumar Jha S/O Late Bhubneshwar Jha R/O Village - Nabanagar, P.S.
Bahesa, District - Darbhanga

.... Petitioner/s

Versus

1. The State Of Bihar
2. Mr. Anjani Kumar Singh, I.A.S., Presently Posted As Principal Secretary,
Human Resources Development Department, Government Of Bihar, Patna
3. Lalit Narayan Mithila University, Kameshwarnagar, Darbhanga Through
Its Registrar, Dr. Bijay Prasad Singh
4. Samrendra Pratap Singh, Vice - Chancellor, Lalit Narayan Mithila
University, Kameshwarnagar, Darbhanga
5. Dr. Vijay Prasad Singh, Registrar, Lalit Narayan Mithila University,
Kameshwarnagar, Darbhanga

.... Opposite Party/s

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with

Miscellaneous Jurisdiction Case No.2479 of 2012

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Binod Jha S/O Late Chandra Kant Jha Resident Of Mohalla L.N.M.U.
Campus, P.G. L.N.M. University, District Darbhanga.

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, H.R.D.,
Department, Govt. Of Bihar, Patna.
2. Anjani Kumar Singh, The Principal Secretary, H.R.D. Department, Govt.
Of Bihar, Patna.
3. Samrendra Pratap Singh, The Vice Chancellor, L.N.M. University,
Darbhanga.
4. Bijay Prasad Singh, The Registrar, L.N.M. University, Darbhanga.

.... Opposite Party/s

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Appearance :



(In MJC No.11 of 2012)

For the Petitioner/s : Mr. Gyanand Roy

For the Opposite Party/s : Mr. Prahlad Kr. Bhagat GP13

(In MJC No.2479 of 2012)

For the Petitioner/s : Mr. Hemant Kumar Jha

For the Opposite Party/s : Mr. Shyam Kishor Sharma GA3

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

15 09-10-2018

Heard learned counsel for the parties.

Learned counsel for the petitioner in both the cases has drawn the attention of this Court towards operative part of the order passed by the learned writ Court whereunder in CWJC No.9831 of 2009 the direction reads as under:-

“In the circumstances, the order passed by the University, as contained in Annexure-1/1, in respect of the petitioner is quashed. The report of the Committee, as contained in Annexure-14, is also quashed. The University is directed to hold an exercise or get an exercise held in terms of the observations of the Apex Court in the Constitution Bench to clearly distinguish the cases of the claimants falling in the category of illegal appointee and those falling in the category of irregular appointee. In case the incumbents whose cases University finds to be only irregular in strict terms of the law laid down by the Constitution Bench, the University shall consider their cases for regularization as one time measure as directed by the Constitution Bench.”

So far as CWJC No.4352 of 2009 is concerned, the operative part of the order passed by the learned Writ Court reads



as under:-

“The committee will consider the case of the petitioners without any delay within a period not later than three months from the date of receipt/production of the order and will pass a reasoned order. The impugned order passed by the Registrar of the University challenged by the petitioners dated 25.11.2017 annexed as Annexure-8 to the writ applications are hereby quashed. Their cases should be considered for regularization in a similar manner as it has been done in case of 196 daily wagers. Petitioners should also be regularized w.e.f. the date of their appointment.”

Learned counsel representing the University has drawn the attention of this Court towards Annexure-A to the show cause filed on behalf of the University which is a notification contained in memo no.8812-33/18 dated 03.07.2018 showing that it has been issued in compliance of the order of the learned Writ Court in the aforesaid writ applications. According to the notification, 11 persons named therein have been regularized against the post shown in the corresponding column of their names with effect from the date mentioned therein. Learned counsel for the University has submitted that as regards Sri Binod Jha (Serial No.9) as per the direction of the learned Writ Court effective date should have been the date of his initial appointment and, therefore, to that extent the notification would be rectified within two weeks.



At this stage, learned counsel for the University has further informed that even though the University intends to pay the salary and the arrears of salary to the persons named in the notification, but those are possible after release of the fund by the State government. It is also informed that the State government has declined to provide funds to the University as a result of which compliance of the later part of the notification intending payment of salary and arrears of salary to the persons notified is not being possible.

Learned counsel for the petitioners in both the cases have jointly submitted that even though the petitioners in both the cases have been regularized in compliance of the order of the learned Writ Court, unless they are paid their salary and arrears of salary of the post on which they have been regularized, the order of the learned Writ Court cannot be said to have been complied with in its terms and spirit.

In the second application, learned counsel has pointed out that as per the direction of the learned Writ Court the cases of the petitioners were required to be considered for regularization in similar manner as has been done in the case of 196 daily wagers. He has submitted that those 196 daily wagers who have been regularized earlier by the University have been



paid all the benefits attached to the post from the date of their regularization.

Learned counsel for the University however does not confirm this position and submits that this shall be subject to verification.

Learned counsel for the State is present, but has not made any statement as regards the allegations made against the State that the State is not making available the funds for payment to the petitioners.

In the given facts and circumstances of the case when this Court considers these two contempt applications keeping in mind the order passed by the learned Writ Court it is found that even though both the orders of the learned Writ Court talk of regularization of the petitioners therein, but having said so the orders do not say anything about consequential benefits. In one of the writ applications though it is stated that the regularization of the petitioners should be done in similar manner as has been done in the case of 196 daily wagers, still it does not speak of any consequential benefits of which the petitioners of the said case entitled to and nothing has been indicated that the persons who were earlier regularized were paid the consequential benefits. These are claims, however, being made by learned counsel for the



petitioners before this Court.

The submission of the learned counsel representing the petitioners that without consequential benefits to be paid to the petitioners, direction of the learned Writ Court to regularize the petitioners cannot be said to have been complied with in its terms and spirit though looks impressive to this Court, but then realizing the jurisdiction in which this Court is dealing with the present matter, the Court is of the view that the order of the learned Writ Court cannot be read by introducing something or assuming something which is not there. If the learned Writ Court has not recorded anything about payment of the consequential benefits, the fact that the State is not making available the funds for payment of the benefits which are part of the notification as contained in Annexure-A to the show cause of the University, this Court cannot initiate a contempt proceeding against the State. It should not be taken as if this Court is expressing any opinion that the State is not liable to make available the funds.

In the opinion of this Court, the petitioners, if so advised, will have to seek enforcement of the notification as contained in Annexure-A to the show cause of the University in an appropriate jurisdiction wherein the University and the State both may be heard and a view may be taken considering all aspects of the matter.



These two contempt applications cannot proceed and are disposed off accordingly giving liberty to the petitioners to file an appropriate application in an appropriate jurisdiction.

(Rajeev Ranjan Prasad, J)

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