

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.233 of 2016

- =====
1. Sanjeev Kumar, Son of Late Shambhoo Nath Verma, Resident of Pankhatoli, P.S.- Kazi Mohammadpur, P.S.- Sadar Muzaffarpur, District - Muzaffarpur
 2. Ajay Kumar Jha, Son of Sri Babu Saheb Jha, Resident of Kamal Niwas, Magardahi, Ward No. 15, P.S. Sadar Samastipur, District - Samastipur

.... Petitioner/s

Versus

1. Rajendra Agricultural University, Bihar, Pusa, Samastipur through its Registrar having officer at Pusa, Samastipur
2. The Vice - Chancellor, Rajendra Agricultural University, Bihar, Pusa, Samastipur
3. The Director Administration, Rajendra Agricultural University, Bihar, Pusa, Samastipur
4. The Office - in - Charge, Comprehensive Cost of Cultivation Scheme, Rajendra Agricultural University, Bihar, Pusa, Samastipur
5. The Officer - in - Charge, Rajendra Agricultural University, Bihar, Pusa, Samastipur
6. The Union of India through Directorate of Economics and Statistics, Ministry of Agriculture, Government of India, Krishi Bhawan, New Delhi
7. The State of Bihar through the Secretary, Department of Agriculture Govt. of Bihar, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. P. K. Shahi, Sr. Advocate Mr. Prabhu Nath Pathak, Advocate
For the Respondent/s	:	Mr. Dhurjati Prasad, G.P.-14
For the University	:	Mr. Arvind Ujjwal, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 19-03-2018

Heard Mr. P. K. Shahi, learned senior counsel for the petitioners, Mr. Dhurjati Prasad for the State and Mr. Arvind Ujjwal for the University.

2. The only issue requires adjudication in the present writ application is whether the respondents are justified in excluding the petitioners from the benefit of MACP on the ground that their



initial appointment was contractual and the benefit is only available to the ad-hoc employees on regularization.

3. Mr. Shahi, learned senior counsel for the petitioners submits that the petitioners were initially appointed on contractual basis after following the regular selection process and considering their satisfactory services, the petitioners were allowed to continue in the University and pursuant to the mechanism worked out before the Apex Court for regularization of the services of the employees working on ad-hoc or contractual basis, the University took step for regularization in the different phases and the case of the petitioners in course of time was considered by the respondents for regularization and they have been regularized in the regular service of the University. He submits that there is absolutely no difference between the service rendered by the petitioners and the ad-hoc employee, in fact, these contractual employees were appointed in the University after following regular selection process, whereas the class of employees named as “ad-hoc” were engaged without following any selection process but on regularization, the respondents have extended them the benefit of counting of past services and granted the benefit of MACP, whereas the petitioners, who were appointed after following the regular selection process have been treated differently. The action of the respondents is discriminating the petitioner is most



irrational and arbitrary.

4. He further submits that from perusal of Annexure-10, it appears that earlier in the Clause 9 it was indicated that the services rendered by the ad-hoc and contractual employee prior to regularization shall not be counted, but the said decision was amended by the decision contained in Annexure-10 dated 27.05.2013 and the ad-hoc employees were extended the benefit of past service for the purpose of grant of MACP.

5. Mr. Shahi submits that such decision is not only illegal, but arbitrary and discriminatory. On regularization. Ad-hoc and contractual employees were taken in the regular establishment on regular pay scale. Prior to regularization, the induction of the petitioners were on the basis of regular selection process, whereas the ad-hoc employees have not inducted as ad-hoc employees by any selection process and in the process of granting the benefit of past services prior to regularization, the respondents have taken different stand and ousted the contractual appointees, appointed by following the regular process, whereas the case of ad-hoc employees, who stands on inferior footing than the petitioners, have been extended the benefit of past service and such discrimination is not reasonable either under Article 14 or Article 16 of the Constitution and as such the decision which exclude the petitioners is violative of Articles 14 and



16 of the Constitution.

6. Mr. Prasad, learned counsel for the State submits that the contractual appointees forms a different class and they cannot be treated at par with the ad-hoc employee for the purpose of counting past service. The Court does not find any merit in the submission of the learned counsel for the State for the reason that in the case of ad-hoc employees, the University has not followed any selection process and if a person appointed without following due selection process were extended the past services on regularization, there is no reason to exclude the contractual appointees, who were appointed after following the due selection process.

7. The Court finds substance in the submission made by Mr. Shahi and considering the totality of the facts situation the Court holds that the contractual employees are on better footing than the ad-hoc employee and as such the petitioners are deserve similar treatment like the ad-hoc employees in the matter of counting of past service before regularization for grant of MACP, accordingly, respondents are directed to consider the case of petitioners for grant of benefit of MACP counting their past services. The omission of contractual employees in the matter of counting past services for grant of MACP is unsustainable. Accordingly, the order as contained in Annexure-10, so far exclusion of the petitioners are concerned is



unsustainable. The respondents are therefore directed to workout the scheme to include the contractual appointees for one additional reason that in the case of **Direct Recruit Class II Engineering Officers Association vs. State of Maharashtra and Others**, reported in **AIR 1990 SC 1607**, the Apex Court has considered the effect of past services in the matter of granting seniority and held out that if the irregular appointment is followed by regular appointment, the benefit of past service has to be reckoned.

8. In view of the aforesaid, the writ application is allowed. The respondent State of Bihar and Rajendra Agricultural University, Bihar, Pusa, Samastipur including the successor Dr. Rajednra Prasad Central University are hereby directed to include the contractual employees to the benefit of past services for grant of MACP. The entire exercise in this regard must be completed within a maximum period of 60 days from the date of receipt/production of a copy of this order.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.03.2018
Transmission Date	

