

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13236 of 2000

Chandrawali Ray Son of Sri Rochi Ray Resident of Village- Narayanpur, P.O. Narayanpur, P.S. Mahnar District- Vaishali, Instructor in Commerce (Shorthand and typewriting) Jamuni Lal College Hajipur District. Vaishali.

... .. Petitioner

Versus

1. The State of Bihar through the Commissioner and Secretary Human Resources Development Department Vikash Bhawan, Patna.
2. Director Higher Education Human Resources Development Department, Vikash Bhawan Patna.
3. The B.R.A. Bihar University Muzaffarpur through the Registrar.
4. The Registrar, B.R.A. Bihar University, Muzaffarpur.
5. Principal Jamuni Lal College Hajipur District. Vaishali .
6. Binay Kumar Lecturer Jamuni Lal College Hajipur, District. Vaishali.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Dinu Kumar, Advocate
For the Respondent/s : Mr. (SC7)

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

18 25-07-2018 The instant case is celebrated example of the reluctance on the part of the respondents leading to pendency of case for years together.

 This writ petition was filed in the year 2000. We are in 2018. Even after 18 years neither the State nor the University has filed any counter affidavit. During 18 years many State counsel and University counsel were appointed and substituted on behalf of the State as well as the University but university



and the State remain the same respondents, they have not bothered to file any affidavit in the present writ petition.

Notice was issued to the private respondents but no one has appeared on behalf of the respondents. Under the aforesaid circumstances the court is of the considered view that there is no point to keep this writ application pending any further.

The petitioner was appointed in the college in question in the year 1978 (28.10.1978). The college was made constituent unit of the university, petitioner is teaching commerce in the college in question right from Sessions 1978-79 and thereafter the college was made constituent on 01.10.1980. From the averment made in the writ application, it appears that the post in question was created by the college in question prior to 1976 i.e. at that time the college was competent to create posts in the college. At the time the college was made constituent unit on 01.10.1980 the university was required to takeover the assets and liability including the services of the teaching and non-teaching employees in terms of provision of Section 4(1) (14) of the Bihar State Universities Act, 1976. The grievance of the petitioner in the present writ petition is notwithstanding that petitioner is working since



28.10.1978 against the post which was created by the college prior to 1976 salary was denied to the petitioner after the above college was made constituent on 01.10.2010.

Mr. Dinu Kumar, learned counsel appearing for the petitioner submit that there was no requirement of sanction of post in the instant case as prior to 1976 it was in the realm of the college in question create psot and for the first time in 1976 the power of creation of post is vested with the State. Yet the issue as to sanction of the post remained pending for years together and on 15.09.1994 the respondents have communicated rejection of the claim of the petitioner in response to the direction issued by this court in C.W.J.C. No. 6750 of 1993 which was disposed of by order dated 18.04.1994.

In the instant case there is dispute as to who was appointed on the sanctioned post and there is rival claim of the petitioner as well as one Binay Kumar. Accordingly, Mr. Dinu Kumar submitted that Binya Kumar was appointed on second post but there was no second post of Instructor against which Mr. Binay Kumar was appointed. In his second attempt petitioner filed C.W.J.C No. 4479 of 1995 for payment of arrears of salary and for sanction of the post of Instructor but the writ petition was dismissed for default thereafter, the



petitioner filed present writ petition in the year 2000.

Three questions have been raised on behalf of the petitioner, firstly, that post created prior to 1976 is sanction post as it was in the realm of the college to create post. Secondly, when the college was made constituent on 01.10.1980, the respondents were required to take decision with regard to takeover of the teaching and non-teaching employees working in the college. Different documents have been enclosed with the writ petition, which were relied upon for the purpose of continuity of the petitioner in the college in question. Thirdly, Mr. Dinu Kumar, learned counsel for the petitioner submit that the petitioner has worked regularly since 27.10.1978 till date, and taking work denying payment of salary would amount of violation of Article 21 and 23.

In the aforesaid background of the fact, he submits that Annexure-9 whereby the claim of the petitioner was rejected, is unsustainable. In fact on 11.12.2017 I.A. No. 9110 of 2017 was filed on behalf of the petitioner, whereby amendment was sought in the writ application and prayer was made for quashing of Annexure-9.

Considering the fact that during the pendency of the writ petition neither the university nor the State has filed any



counter affidavit and considering the nature of dispute pleaded in the writ application, the writ application is disposed of with a direction to the university as well as respondent-State to examine the claim of the petitioner and if it is found that the petitioner has regularly worked in the college in question, the university as well as the State will ensure payment of at least the minimum wages admissible to the post. In view of the judgment of the Apex Court in the case of **State of Punjab Vs. Jagjit Singh** reported in (2017) SCC Vol. 1, 148.

Necessary decision on the claim for payment of salary for the period the petitioner has actually worked must be taken by the respondent university and the decision of the university as to entitlement of the petitioner for regularization of service in the light of the judgment in the case of Apex Court in **Uma Devi Case (2006) 4 SCC 1** as explain in **2010 (9) SCC 247**. The State government is also directed to release appropriate fund so that the monetary benefit admissible to the petitioner is extended. The entire exercise must be made within a maximum period of four months from the date of receipt/production of a copy of the aforesaid writ application.

With the aforesaid, the writ petition is disposed of.

Before I part with I record my utmost displeasure in



the manner in which the State and university has conducted this case.

(Anil Kumar Upadhyay, J.)

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