

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1464 of 2013
IN
Civil Writ Jurisdiction Case No. 4460 of 2010

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1. Ranjan Kumar Singh S/O Late Brahmdeo Prasad Singh Village - Karna, P.O. + P.S. Parwata, District - Khagaria
 2. Tara Devi, w/o Late Shyam Sunder Tiwari Village – Karna P.O.+P.S. Parwata, District - Khagaria
 3. Bidhyanand Singh S/O Late Daroga Prasad Singh Village - Karna, P.O. + P.S. Parwata, District - Khagaria
 4. Gyandeo Das S/O Late Rajendra Das Village + P.O. + P.S. Parwata, District - Khagaria
 5. Amar Kumar Singh S/O Basudeo Singh Village - Karna, P.O. + P.S. Parwata, District - Khagaria
 6. Poonam Devi, w/o Late Ranjan Choudhary Village + P.O. Kanhaiyachak, P.S. Parwata, District - Khagaria
 7. Rabindra Kumar Chaudhary S/O Late Baldeo Chaudhary Village + P.O. Chakprayag, P.S. Parwata, District - Khagaria
 8. Ramanand Chaudhary S/O Late Chhedi Prasad Chaudhary Village + P.O. Kanhaiyachak, P.S. Parwata, District - Khagaria
 9. Kishori Prasad Singh S/O Late Mahabir Prasad Singh Village - Kara, P.O. + P.S. Parwata, District - Khagaria
 10. Sunil Kumar Mishra S/O Shri Ram Chandra Mishra Village + P.O. Kanhaiyachak, P.S. Parwata, District - Khagaria
 11. Satyendra Kumar S/O Late Surendra Mohan Poddar Village + P.O. Baisa, P.S. Parwata, District - Khagaria
 12. Lakhan Lal Singh S/O Late Sheodhari Singh Village - Kara, P.O. + P.S. Parwata, District - Khagaria
 13. Jatadhari Singh S/O Late Anuplal Singh Village + P.O. Salarpur, P.S. Parwata, District - Khagaria
 14. Lalan Kumar S/O Bishnu Deo Prasad Village + P.O. Kulharia, P.S. Parwata, District - Khagaria
 15. Ramchandra Prasad S/O Late Murli Manohar Prasad Village + P.O. Baisa, P.S. Parwata, District - Khagaria
 16. Krishna Kumar S/O Late Rajeshwar Prasad Yadav Village - Kataiya, P.O. Kataiya, Mahe, P.S. Pipra, District - Supaul
 17. Shri Amresh Chaudhary S/O Shri Ninu Babu Choudhary Village + P.O. Kanhaiyachak, P.S. Parwata, District - Khagaria
 18. Shri Sadanand Pandit S/O Late Satwari Pandit Village - Monahida, P.O. + P.S. - Parwata, District - Khagaria
 19. Sri Rabindra Mishra S/O Late Bala Mishra Village + P.O.



- Kanhaiyachak, P.S. Parwata, District - Khagaria
- 20.Rajeena Khatoon, w/o Late Sajjad Ahmed Village - Rahmatpur, P.O. Pipra Latik, P.S. Parwata, District - Khagaria
- 21.Shri Ghuran Mahto S/O Late Rameshwar Mahto Village + P.O. Kanhaiyachak, P.S. Parwata, District - Khagaria
- 22.Shri Dewanand Chaudhary S/O Late Chandra Prakash Chaudhary Village + P.O. Kanhaiyachak, P.S. Parwata, District - Khagaria
- 23.Shri Rijhan Mandal S/O Shri Baleshwar Mandal Vill - Kajalawan, P.O. Jorawarpur, P.S. Parwata, Distt - Khagaria
- 24.Bindeshwari Das S/O Late Bhoomidas Vill + P.O. Kolwara, P.S. Parwata, Distt - Khagaria
- 25.Shri Mithilesh Thakur S/O Late Shiwal Thakur Village - Karna, P.O. + P.S. Parwata, District - Khagaria
- 26.Shri Nawal Kishore Bhagat S/O Late Triveni Bhagat Village - Rupauhali, P.O. Temaiya, P.S. Parwata, District - Khagaria
- 27.Shri Hardeo Mandal S/O Late Dwarika Mandal Village - Kama, P.O. + P.S. Parwata, District - Khagaria
- 28.Shri Dewanand Singh S/O Late Sachidanand Singh Village - Mojahida, P.O. + P.S. Parwata, District - Khagaria
- 29.Shri Binay Kumar S/O Late Asharfi Prasad Singh Village - Babuchakla, P.O. - Mahmuddipur, P.S. - Pasraha, District - Khagaria
- 30.Sri Rajaram Poddar S/O Sri Sudin Poddar Village + P.O. Kanhaiyachak, P.S. Parwata, District - Khagaria
- 31.Smt. Manju Devi W/O Late Shri Suresh Sah Village + P.O. - Dumariya, Bujurg, P.S. Parwata, District - Khagaria
- 32.Shri Uday Kumar Rai S/O Late Sant Lal Rai Village - Kojahida, P.O. + P.S. - Parwata, District - Khagaria
- 33.Shri Nand Kishore Sah S/O Late Hukum Sah Village + P.O. + P.S. - Parwata, District - Khagaria
- 34.Shri Moghu Singh S/O Late Deonarayan Singh Village - Mojahida, P.O. + P.S. Parwata, District - Khagaria
- 35.Jagdish Dom S/O Late Dhoday Dom Village - Karma, P.O + P.S. - Parwata, District - Khagaria

.... Petitioners-Appellants

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resources Development Department , Govt. Of Bihar, Patna (Now Department Of Education)
3. The Secretary, Higher Education Department, Govt. Of Bihar, Patna
4. The Director, Higher Education Department, Govt. Of Bihar, Patna
5. The Tilka Manjhi Bhagalpur University, Bhagalpur Through Its Registrar



6. The Vice-Chancellor, Tilka Manjhi Bhagalpur University Bhagalpur
7. The Principal, Kabir Moti Darshan College, Parwata, Distt - Khagaria
.....Respondents-Respondents
8. Rajkumar Singh S/O Late Bhailal Singh Village - Karna, P.O. + P.S.
Parwata, District - Khagaria
9. Shri Ramawtar Choudhary S/O Late Hishabi Choudhary Vill. + P.O. -
Kanhaiya Chak, P.S. - Parwata, District - Khagaria
- 10.Smt. Manorma Devi W/O Sachidanand Choudhary Village + P.O.
Kanhaiyachak, P.S. Parwata, District - Khagaria
- 11.Late Subhash Chandra Wife Rekha Sinha, Father Late Ram Awtar
Prasad Vill. + P.O. - Kanhaiyachak, P.S. - Parwata, District - Khagaria
.... Petitioners- Respondents

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Appearance :

For the Appellants : Mr. Rajendra Prasad Singh, Sr. Advocate
For the Respondents : Mr. Anjani Kumar, Sr. Advocate
For the State : Mr. Ashutosh Ranjan Pandey, AAG-15

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 19-02-2018

Heard Mr. Rajendra Prasad Singh, learned Senior
Counsel representing the appellants, Mr. Anjani Kumar,
learned Senior Advocate assisted by Mr. Shailendra Kumar
Singh, learned Advocate representing the Tilka Manjhi
Bhagalpur University, Bhagalpur and Mr. Ashutosh Kumar
Prasad, learned A.A.G.-15 representing the State.

2. These appellants, having failed to persuade the
learned Writ Court for issuance of a direction upon
respondents authorities to regularize their service from the



date of their joining in the College in question with all consequential benefits, have moved in this Intra Court Appeal challenging the order dated 10.04.2013 passed by the learned Writ Court in CWJC No. 4460/2010.

3. Mr. Rajendra Prasad Singh, learned Senior Counsel representing the appellants have drawn our attention towards the order passed on earlier occasion vide Annexure-24 of the writ application in CWJC No. 12544/2003 on 11.07.2005. A perusal of the order passed in the said writ application by the then learned Single Judge of this Court would show that in view of the stand taken in the counter affidavit as well as Annexure-1 in the said writ application, learned Writ Court found that the new aspect had been brought on the record whereunder it was found that the University had sent the recommendations regarding the petitioners and other persons to the Secretary of the concerned Department, and therefore, the Court was of the view that the matter would require a reconsideration in the light of a Full Bench decision in the case of **Braj Kishore Singh Vs. State of Bihar and Ors.** reported in **1997(1) PLJR 509(FB)**. The Secretary, Human Resources Development Department



was directed to pass an order in terms of decision of Full Bench in the case of **Braj Kishore Singh (supra)** and it was further directed that if an order is passed in favour of the petitioners, he shall release appropriate fund with respect to such non-teaching post which comes within the staffing pattern within a period of four months from the date of passing of the order.

4. By virtue of the order of this Court in CWJC No. 12544/2003, the Human Resources Development Department (Higher Education), Government of Bihar, vide its letter dated 26.06.2006, as contained in Memo No. 931, addressed to the Pro-Vice Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur communicated the approval of the State Government for creation of 22 additional post in Class – III and 21 additional post in Class – IV under the staffing pattern of the K.M.D. College, Parbatta, Bhagalpur. The said Memo No. 931 dated 26.06.2006, clearly provided under paragraph-2, that these employees will be entitled for all the benefits such as salary and other allowances as also post retiral dues as applicable to the employee of the University with effect from the year 2003. In paragraph-3, it has been



further made clear that no dues would be payable for the period prior to the year 2003.

5. Learned Senior Counsel submits that vide Annexure-25 the University has given the benefits in terms of Memo No. 931, however, later on the Human Resources Development Department, Government of Bihar vide its letter no. 26.12.2008 (Annexure-27 to the writ application) gave all the benefits to a batch of 47 employees with effect from retrospective dates and they have been allowed the benefits including the salary.

6. Learned Senior Counsel, therefore, submits that these petitioners-appellants should have been treated like those who were given the benefits vide letter dated 26.12.2008 (Annexure-27 to the writ application).

7. On the other hand, learned senior counsel representing the University as well as the State have opposed the appeal and submitted that the learned Single Judge has rightly dismissed the writ application finding no merit in the contention of the petitioners that they should be allowed the benefit of salary of a post which was not even covered under the staffing pattern prior to the year 2003. It



has further been argued that the petitioners having got the benefit of a judicial order of this Court in the earlier round of litigation vide Annexure-24 to the writ application and having accepted the subsequent decision of the Human Resources Development Department, Government of Bihar, whereunder they have been allowed all the benefits since the year 2003 except the salary for the period prior to the year 2003, at this stage after lapse of 4 years from the said date of the decision, as contained in Annexure-26 to the writ application, cannot be allowed to raise a grievance by filing this writ application in the year 2010.

8. Learned counsel submits that the writ application is thus liable to be dismissed on the ground of delay itself. It has also been pointed out that from perusal of Annexure-25 dated 26.06.2006 itself, it will appear that the Human Resources Development Department, Government of Bihar while approving the appointment of these petitioners had simultaneously approved creation of 22 additional post in Class – III and 21 post in Class – IV under the staffing pattern which would show that these petitioners have been taken in service by creating additional post.



9. So far as Annexure-27 is concerned, learned Senior Counsel representing the University submits that a perusal of Annexure-27 would show that the said decision was taken by the Human Resources Development Department in compliance of the order passed on 27th September, 1999 in CWJC No. 4703/1999 and the College in question in the said case is K.S.S. College, Lakhisarai, therefore, these petitioners-appellants cannot be allowed to cite the case of a different College because the decision taken in their case had been taken in a different fact situation which are not before this Court.

10. We, having heard learned counsel for the parties and upon perusal of the records, find force in the submission of learned Senior Counsel representing the University and the State. On perusal of the records, it is crystal clear that vide Annexure-25 dated 26.06.2006 the petitioners-appellants were appointed after creation of additional post under the staffing pattern, which were required to be approved by the Government. The petitioners-appellants were given all such benefits which were available to the employees of the University since the



year 2003. They have got salary and allowances since the year 2003. The petitioners-appellants accepted the decision as contained in Annexure-25 and never challenged it before filing the writ application. In the writ application, we do not find any pleading to the effect that the petitioners-appellants ever represented to the authorities of the State or University against that part of the decision as contained in Annexure-25 by which it was decided not to pay any salary for the period prior to 2003. We further agree that Annexure-27 which relates to K.S.S. College, Lakhisarai cannot be a ground or cause of action for the petitioners-appellants to maintain a writ application after a period of four years. The writ application is devoid of any merit because the petitioners could not have claimed salary for the period prior to the year 2003 on the face of the fact that these posts were created/sanctioned only additionally after the order of this Court, under the staffing patten in order to accommodate the petitioners-appellants. The petitioners having accepted the appointment on the terms and conditions which are clearly stipulated in Annexure-25 cannot raise the grievance against a part of that decision in the year 2010. They are, therefore,



held to be disentitled to the reliefs as prayed in the writ application.

11. In the result, we do not find any illegality or infirmity in the impugned order passed by the learned Writ Court. This Letters Patent Appeal has not merit. It is, accordingly, dismissed.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.02.2018
Transmission Date	NA

