

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19931 of 2011

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Krishna Kumar Yadav S/O Late Gorelal Yadav R/O Village And Post-
Kulharia, P.S.- Parbatta, District- Khagaria

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary Higher Education Department, Government Of Bihar, Patna
3. The Tilka Manjhi Bhagalpur University, Bhagalpur Through Its Registrar
4. The Vice Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur
5. The Registrar, Tilka Manjhi University, Bhagalpur
6. The Principal, Koshi College, Khagaria, P.S. + Post & District- Khagaria

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Prasad Singh, Sr. Advocate
		Mr. Nirala Kumar Singh, Advocate
		Mr. Rajeev Kumar Singh, Advocate
For the Respondent/s	:	Mr. Anjani Kumar Singh, AAG 4

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 02-11-2018

Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the respondents.

2. This is the second round of litigation. Earlier the
petitioner had approached this Court in CWJC No. 7514 of 2007
which was disposed of by order dated 26.8.2009. In that case the
petitioner had prayed for a direction to the respondents to pay
salary. The writ petition was disposed of after noticing rival
contentions of the parties with the following
observations/directions:-

“Since the Incharge Principal has certified about the
work of the petitioner, matter needs enquiry.
Therefore, this writ application is disposed of with a



direction to the Registrar of the University to hold an enquiry himself or get an enquiry held by a senior officials of the University, from the records of the College and any other material which may be found relevant, to ascertain as to whether petitioner had actually worked in the College during the period or not. In case, it is found that the petitioner has actually worked in the College continuously since September, 1985 till date, then only his case for payment of any remuneration shall be considered by the University. The Registrar of the University shall also consider that if petitioner has been allowed to continue in College without any authority of the University, then who will be responsible person for payment of wages/salary of the petitioner for working in the College without any authority and without any knowledge of the University.

It is expected that the Registrar shall complete the entire exercise within three months from the date of receipt/production of a copy of this order and take final decision either way.

With the above observations, this writ application is disposed of.”

3. After the aforesaid order of this Court, the matter was enquired into by the Inspector of College, who submitted his enquiry report on 24.02.2010, stating that the petitioner has worked in the college on being engaged by the Principal/ Professor In-charge of the college. From the materials on record, it appears



that the engagement of the petitioner was communicated to the University but the University could not approve the claim of the petitioner for engagement as Lab. Incharge. The relevant part of the enquiry report is quoted below:-

“(B) Daily Attendance Register:

Before holding the enquiry in the matter I met the Principal of the College in his office chamber and requested him to make available the relevant records of the College to ascertain as to whether the petitioner had been working continuously in the College since September 1985 onwards. The office of the College did not make me available the daily attendance register of the employees for the period from September 1985 to February 2005. It was told by the present Head Clerk that attendance registers for the period from 1985-1987 had already been washed away in the devastating flood of 1987 and remaining attendance registers for the period between 1988 to February 2005 were snatched away by the agitated students of the College. However, any document regarding lodging complaint in this regard was not shown. Hence, proof from the attendance register to show whether the petitioner worked in this period or did not work is lacking.

The attendance register of employees of the College was shown from March 2005 to November 2006 and June 2007 to December 2007 and also three days of May 2008. During the said period, the



petitioner was found present excluding Sundays and holidays. However, he was absent in the month of July 2005 upto 28th August 2005. In addition to this only three days attendance register of May 2008 was placed in which the petitioner was present. I was told by the present Principal that due to non-payment to the petitioner after taking over the charge of the office of the Principal of this College, he did not put the petitioner in question to sign and mark his presence in the attendance register meant for regular employees. That is why the attendance of the petitioner was not found in the daily attendance register of the College from November 2008 onwards. In this connection the petitioner, who was present at the time of enquiry said that he was signing and making his presence in a separate register. However, no such register was shown.

In addition to above, the petitioner presented a photocopy of attendance register for the period June, August and September 2008. He was present during these three months. But he did not produce the certified copy nor the office could show the original copy.

A summary of presence of the petitioner as recorded in the attendance register is put below in a tabular form:

Period for which attendance register was shown	Present	Absent	Period for which the register was shown
Mar. 2005 to Nov.06	Mar. 2005 to June 05 & 29 th Aug.200-Nov.	July 2005 to 28 th Aug. 2005	I) Sept. 85 to Feb 2005



June 2007 to Dec. 07	06	-	ii) Dec.06 May 07
3 days of May 2008	Present	-	iii) Jan 2008 Apr. 08
Jun, Aug & Sept. 2008	Present		iv) 28 days of May 2008
			v) Jun 2008- Oct. 08

On the basis of attendance registers produced by the College office it can only be said that the petitioner Sri Krishna Kumar Yadav did work continuously from March 2005 to November 2006 excluding July 2005 to 28th August 2005, June 2007 to December 2007 and 3 days of May 2008. But whether the petitioner actually worked or did not work continuously since September 1985 cannot be ascertained on the basis of attendance register.

(C) Class Register of Practical Classes:

Besides the daily attendance register some classes register for practical classes were also shown to me which show the presence of the petitioner in those classes the presence of the petitioner in practical classes are as follows:

Year	Month	Days
1991	September	4,7, 13, 20
1992	February	5,7,12, 13, 17, 21, 22, 24, 28, 29
	March	7, 9, 13, 25, 26, 27, 28, 31
	April	1, 2, 4, 8, 10, 20, 21, 24, 25, 31
	May	4, 8, 9
	June	29, 30
	July	10, 11, 15, 18, 21, 27, 28
	August	4, 5, 6, 7, 8, 10, 14, 31
	September	1, 7, 8, 14, 15



1993	February	4, 5, 6, 13, 16, 18, 20, 23, 27, 30
	March	23
	April	23
	May	24
	July	27, 31
	November	27
2008	February	4, 11
	September	10, 17, 24
	November	19, 24
	December	8, 10, 15, 17, 22, 24
2009	January	5

On the basis of the class register for practical classes it can only be said that the petitioner did work in the College in the years 1991, 1992, 1993, 2008, 2009 for some days, but it cannot be ascertained that he did actually work continuously.

Thus if one relies on the letters of the different Principals/Prof.-in-charges of the College communicated to the petitioner and the University from time to time, as mentioned at above, it seems that the petitioner did actually work continuously since September 1985 onwards. But daily attendance registers and class registers for practical classes do not confirm the same. If one relies on these as mentioned at B and C, it can only be said that the petitioner worked in the College for some period as mentioned at B and C, but it cannot be said that the petitioner did actually work continuously since September 1985. While considering for payment to the petitioner as ordered by Hon'ble High Court Patna, opinion of Finance Officer and Financial Adviser should be sought.



As regard to fixing the responsibility for allowing the petitioner to continue in the college without any authority of the University. It is clear that the College itself informed the University time and again and it was well within the knowledge of the University. However, in absence of approval of the authority of the University successive Principals allowed the petitioner to continue in the College without obtaining approval in the matter. In the light of the provision laid down in the statute in respect of appointment/absorption of non-teaching employee, all the then Principals seem to be equally responsible for the continuance of the petitioner in the College service from 1985 to till date.

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| 1. Dr. M.B. Jama | – 16.1.1985 to 18.09.1985 |
| 2. Dr. Ramdeo Nr. Sinha | – 19.09.1985 to 31.12.1985 |
| 3. Dr. Yadunandan Mishra | – 01.01.1987 to 12.02.1990 |
| 4. Dr. Upendra Kr. Sinha | – 01.08.1991 to 31.07.1994 |
| 5. Sri Shivnandan Prasad | – 01.08.1994 to 23.01.1996 |
| 6. Dr. Ram Bachan Singh | – 24.01.1996 to 05.02.1997 |
| 7. Dr. Ashok Kumar Sinha | – 06.02.1997 to 22.02.1997 |
| 8. Dr. Ram Bachan Singh | – 23.02.1997 to 24.07.2002 |

4. Mr. Rajendra Prasad Singh, learned senior counsel appearing on behalf of the petitioner submits that the petitioner has been regularly working since 5.4.1983 till date and as such the respondents are under obligation to make payment of remuneration for the period the petitioner has actually worked. So far as holding of enquiry and fixing accountability is concerned, the petitioner has no concern. The Professor-in-charge/ Principal, has to be made accountable for engaging the petitioner. He is



interested in payment of remuneration for the period the petitioner has actually worked specially when during the course of enquiry/verification of the records the Inspector of the College has found that the petitioner has actually worked. Referring to the inspection report he submits that the enquiry report dated 24.2.2010 also admits that the petitioner has worked in the college in question and as such in terms of Annexure-14 the petitioner would be entitled to payment of remuneration.

5. Mr. Anjani Kumar, learned senior counsel appearing on behalf of the T.M.Bhagalpur University refers to the order of this Court dated 26.8.2009 (Annexure-14) to contend that payment of remuneration is admissible only in case the petitioner establishes that he has regularly worked since September, 1985. From the report of the Inspector of the College it appears that there is admission to the effect that the petitioner did work in the college but the attendance register and class Register of Practical case with regard to taking classes also does not indicate that he has regularly attended the college and worked.

6. On perusal of entire pleadings the Court finds that there are enough materials to indicate that the petitioner has worked in the college and as such if the petitioner has been



allowed to work, he is entitled to remuneration in terms of Annexure-14.

7. The issue of engagement of the petitioner either by the authorities of the University or otherwise, may not be relevant in the instant case for the purpose of deciding the entitlement of the petitioner for remuneration for the period the petitioner has actually worked. In fact, similar issue was considered by the Apex Court in the case of Government of **Andhra Pradesh Vs. K.Brahmanandam & Ors.: (2008) 5 SCC 241** wherein the Apex Court on consideration of various aspects of the matter and the liability to pay salary to the teacher appointed in the recognized school held out that the right to claim salary must arise under a contract or under a statute. If such a right arises under a contract between the appointee and the institution, only the latter would be liable therefor. Its right in certain situation to claim reimbursement of such salary from the State would only arise in terms of the law as was prevailing at the relevant time. In the instant case the undisputed fact is that the University was informed by the College about the engagement of the petitioner but the University neither approved nor rejected the engagement of the petitioner and thus due to silence of the University the College utilized the services of the petitioner and as such non-payment of



remuneration would be in teeth of Articles 21 and 23 of the Constitution of India and also in teeth of Section 70 of the Contract Act.

8. Applying the principle discussed in the judgment of the Apex Court in the case of K.Brahmanandam (supra), the Court is of the view that the liability to pay remuneration cannot be directly fastened against the University. However, if the petitioner's service was utilized by the College for imparting instruction then the Principal of the college is under obligation to ensure payment of salary to the petitioner for the period the petitioner has actually worked but the University cannot disown its liability by maintaining golden silence on the engagement of the petitioner.

9. Accordingly, the writ petition is disposed of with a direction to the University to fix accountability on the Principal(s) for engaging the petitioner and allowing him to work. Since the petitioner was allowed to work within the knowledge of the University, the University is primarily responsible for ensuring payment of remuneration and thereafter the University shall be at liberty to recover that amount from the Principal/Professor-in-charge who allowed the petitioner to work notwithstanding there was no such legal sanction. Necessary order for payment of



remuneration to the petitioner for the period the petitioner has actually worked, shall be passed by the University within a maximum period of four months from the date of receipt/production of a copy of this order and thereafter the University shall be at liberty to recover the said amount from the concerned Principal of the College who engaged and allowed the petitioner to work within a further period of three months from the date of making payment of remuneration to the petitioner.

10. With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
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