

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17451 of 2010

1. Smt. Lakshmi Devi W/o Kapil Deo Mandal
2. Sanjay Kumar S/o Kapil Deo Mandal
3. Manju Devi D/o Kapil Deo Mandal
4. Sanju Devi D/o Kapil Deo Mandal,
All resident of Village-Nasrathkhani, P.S.-Nathnagar (Lalmatiya), P.O.-
Champanagar, District- Bhagalpur (Bihar).

... .. Petitioner/s

Versus

1. The Tilka Manjhi Bhagalpur University, Bhagalpur through its Vice
Chancellor.
2. The Vice Chancellor Tilka Manajhi Bhagalpur University, Bhagalpur.
3. The Registrar Tilka Manajhi Bhagalpur University, Bhagalpur.
4. The Finance Officer Tilka Manajhi Bhagalpur University, Bhagalpur.
5. The Principal T.N.B. College Bhagalpur.
6. The Hostel Superintendent U.G.C. Hostel T.N.B College, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Radha Raman Verma
For the Respondent/s : Mr. Ashok Kumar Keshariashok Kumar Keshari

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

14 18-06-2018 An interlocutory application bearing I.A. No. 414 of

2018 has been filed by the petitioner for substitution of legal
heirs of original petitioner Kapil Deo Mandal, who died on
19.11.2017.

The I.A. No. 414 of 2018 is allowed and the legal
heirs as mentioned in Para 1 of the interlocutory application are
directed to be substituted in place of original petitioner.

Heard leaned counsel appearing on behalf of the
petitioners and counsel appearing on behalf of the State.

The original Petitioner has filed the present writ



application for the reliefs; firstly for counting his previous service for the purpose of qualifying pensionary service period and secondly against the action of the respondent for making recovery of alleged excess amount on superannuation of the petitioner.

So far as the first part is concerned, counsel for the petitioner with reference to LPA No. 1844 of 2012, submits that the case of the petitioner is squarely covered by the order of LPA Court in LPA no. 1844 of 2012 vide judgment and order dated 29.02.2016 as the similar issue was examined by the LPA Court in LPA no. 1844 of 2012. The relevant part of the decision passed in LPA No. 1844 of 2012 reads as follows:

“3. The facts are not in dispute. The writ petitioner/appellant was recruited as 'Darwan' in Hoster NO. 2 of Post Graduate Boy's Hostel at Tilkamanjhi Bhagalpur University, Bhagalpur (for the sake of brevity the 'University') on 05.09.1997 as daily wager. It may be noted here that prior to coming into force of the Bihar Universities Act, 1976, 134 posts in Class IV were sanctioned including for Boy's Hostel as aforesaid. It was on these sanctioned posts that writ petitioner/appellant was recruited as a daily wager. The Syndicate of the University in its meeting dated 19.07.1981 decided to absorb in permanent service of Class IV employees working in different hostels of the respondent University. This is Annexure-1 to the writ petition. Pursuant to the aforesaid formal office order



was issued by the University, being Office Order No. 41 of 84 dated 04.08.1984, whereby the services of the petitioner and others were absorbed with effect from 01.08.1981. This is Annexure-2 to the writ petition. It may be noticed that this order has neither been withdrawn nor canceled by the University till date. Consequently, the writ petitioner/appellant continued to be paid his regular salary up to 30.08.1999, virtually without break. It appears that at that stage a controversy started, whether under the Bihar Universities Act, 1976, the posts were sanctioned or not? The stand of the employees was that the posts were already sanctioned, as noticed above, prior to 1976 itself. As the hostels were in existence from prior to 1976 Act and, in any view of the matter as there existed a staffing pattern, in view of the Full Bench judgment of this Court in the Case of Braj Kishore Singh & Ors.-Versus-the State of Bihar and Ors since reported in 1997 91) PLJR 509, the posts, according to staffing pattern, would be deemed to be sanctioned, but, notwithstanding the aforesaid, under some misconception, the University sought fresh sanction from the Government and this time the Government reduced and sanctioned only 47 posts. It is because of that confusion the salary of petitioner and his like were stopped though they continued to work. After this sanction by the State an advertisement was published in the newspaper for appointment/absorption/regularization of employees on Class-IV posts on or about 19.10.2001. In view of the confusion prevailing in the University and the precarious condition in which the writ petitioner/appellant was selected, absorbed and his salary was then



paid from June, 2003. Hence, the period of dispute of status of the petitioner in between 31.08.1999 to 04.06.2003, there is no dispute thereafter. The petitioner superannuated with effect from 31.05.2010, but when he filed his papers for grant of retiral dues, he was told that he had not completed 10 years of service, which is qualifying service for retiral dues. He then filed the present writ petition, which, as noted above, was dismissed on account of delay in approaching for verification of the record. Before the learned Single Judge, reliance was place not only on the Full Bench judgment of this Court in the case of Braj Kishore Singh (Supra) but also in the case of Sushil Thakur Vs. Tilkamanjhi Bhagalpur University & Ors, being judgment dated 06.04.2011 passed in CWJC No. 2714 of 2006, which was affirmed by the Division Bench in L.P.A. No. 1902 of 2011, which L.P.A. of the University was dismissed on 02.03.2012, wherein the learned Single Judge of this Court had taken note of the sequence of events and held that posts were duly sanctioned and the petitioner and their like were duly regularized on the said posts under similar circumstances. But, in the writ proceedings of the instant case, the learned Single Judge held that the writ petitioner/appellant, though similarly situated, could not be granted any relief be4. We have gone through the records and we find that once this Court, in the case of, had already held that the employees were regularized Sushil Thakur (Supra)by the University itself who have given the same benefits to other4 similarly situated employees including the writ petitioner/appellant, it is only after superannuation of the petitioner/appellant, when he was denying the retiral benefits,



ignoring the judgment in case of Sushil Thakur (Supra), had approached this Court.

5. In our view, the University could not have done so on the facts and circumstances being the same. We are of the opinion that the writ petition ought to have been allowed and, for the period under consideration as noted above, the writ petitioner/appellant had to be paid his remuneration and the said period would have to be taken into account for granting him continuity in service and consequently in retiral dues.

6. Therefore, we allow this appeal and set aside the order of the writ Court, with a direction to the University to pay the arrears of the salary for the period, in question, and take note to consider the period of his service from 30.08.1999 to 04.06.2003 for the purposes of calculating his total period of service with all consequential benefits, in so far as retiral dues are concerned.”cause of belated approach of this Court.

4. We have gone through the records and we find that once this Court, in the case of, had already held that the employees were regularized Sushil Thakur (Supra) by the University itself who have given the same benefits to other4 similarly situated employees including the writ petitioner/appellant, it is only after superannuation of the petitioner/appellant, when he was denying the retiral benefits, ignoring the judgment in case of Sushil Thakur (Supra), had approached this



Court.

5. In our view, the University could not have done so on the facts and circumstances being the same. We are of the opinion that the writ petition ought to have been allowed and, for the period under consideration as noted above, the writ petitioner/appellant had to be paid his remuneration and the said period would have to be taken into account for granting him continuity in service and consequently in retiral dues.

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So far as the recovery part is concerned, counsel for the petitioner submits that there is no foul play or misrepresentation or fraud by the petitioner and in view of the judgment of the Apex Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih (white washer), etc.: 2015 (1), PLJR (SC) 261- (2015) 4 SCC 334**, recovery from the petitioner after superannuation is not sustainable, and as such the order as contained in Annexure-1 is hereby quashed.

The respondents are directed to take fresh decision in the light of judgment passed in L.P.A. No. 1844 of 2012 within a maximum period of 4 months from the date of



receipt/production of copy to this order.

It is made clear that recovery from the post retiral dues of the petitioner is not sustainable and after quashing of the order to that effect the respondents are restrained from taking steps for further recovery of alleged excess amount from the consequential benefit of the original petitioner.

With aforesaid, the writ application is allowed and disposed of.

(Anil Kumar Upadhyay, J)

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