

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1360 of 2015

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Parmeshwar Sharma, Son of late Bisho Mistri, Resident of Mohalla- Hasanchak,
Post- Lalbagh, Police Station- Town Darbhanga, District- Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through the Principle Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. The Vice Chancellor, Lalit Narayan Mithila Univ., Kameshwar Nagar, Darbhanga.
3. The Registrar, Lalit Narayan Mithila Univ., Kameshwar Nagar, Darbhanga.
4. Head of the Department, P.G. in Chemistry, Lalit Narayan Mithila Univ., Kameshwar Nagar, Darbhanga.
5. The Finance Officer, Lalit Narayan Mithila Univ., Kameshwar Nagar, Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D. K. Sinha, Sr. Advocate with Mr. Girish Chandra Jha, Advocate
For the University	:	Mr. Ajay Bihari Sinha, Advocate
For the State	:	Mr. Prabhat Ranjan, AC to GP 6

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 06-08-2018

Heard learned counsel for the petitioner; State and L. N.
Mithila University.

2. The petitioner had moved the Court for the following
reliefs:

“That this is an application for issuance of appropriate writ or writs, direction or directions commanding the respondents to regularize the service of the petitioner who is working as Laboratory Incharge on a vacant sanctioned post appointed by the then Respondent No. 4 on 12.09.1985 vide department letter No. 946 and also in view of the participation in the interview in pursuance of the advertisement published in the year 1997 and or issuance of appropriate



consequential writ or writs to pay salary to the petitioner since his joining as Lab Incharge in the department of Respondent No. 4 and also payment of statutory as well as penal interest thereon and/or issuance of appropriate consequential writ or writs under the facts and circumstances of the case.”

3. The admitted position with regard to initial appointment of the petitioner is based on Annexure-1, which reads as under:

“ UNIVERSITY DEPARTMENT OF CHEMISTRY

L. N. MITHILA UNIVERSITY

Kameshwarnagar, DARBHANGA-846004.

P.G. Chem.- 946

85-86 dt. 24-9-89

To,

Sri Parmeshwar Sharma

Hassan Chawk, Darbhanga.

Subject:- Appointment of Laboratory Incharge on Honourary basis.

With reference to your application dated 22/2/84, I am to inform you that you have been appointed as a Laboratory incharge in the department of Chemistry L.N. Mithila University, on Honourary basis. You are directed to report on duty in the department of chemistry before Prof. Incharge physical/Organic/ Inorganic laboratory on 26.9.85 at 11 A.M. Your case will be forwarded to the University for consideration.

Sd/- Illegible, 12/9/85

PROFESSOR & HEAD

UNIV. DEPTT. OF CHEMISTRY

L.N. MITHILA UNIVERSITY



DARBHANGA.”

4. From the same, it is absolutely clear that the initial appointment of the petitioner was made only on the basis of an application filed by him. This is totally impermissible in the eyes of law. Further, a Full Bench judgment of this Court in the case of **Ram Sevak Yadav vs. State of Bihar (Full Bench)** reported as **2013 (1) PLJR 964**, after considering the decisions of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka v. Uma Devi** reported as **2006 (2) PLJR 363** and also **State of Karnataka v. M. L. Kesari** reported as **(2010) 9 SCC 247** and other decisions on the point, has categorically held that any appointment made *dehors* compliance of Article 14 of the Constitution of India without advertisement cannot be regularized, no matter having continued for a long period of time. The relevant being at paragraph no. 43 of the judgment is quoted hereinbelow:

“43. We therefore sum up our conclusions and answer the reference as follows :-

A) Uma Devi (supra) prohibits regularisation of daily wage, casual, ad-hoc and temporary appointments, the period of service being irrelevant;

B) An illegal appointment void ab-initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularised under any circumstances.

C) Irregular appointments can be regularised if the appointment was made by an authority



competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

D) The appointment must not have been an individual favour doled out to the appointee alone and the person must have continued in service for over ten years without intervention of any court orders.”

5. Having regard to the aforesaid, on the basis of the admitted position, the Court finds that regularization of service of the petitioner is not permissible in law.

6. Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

Anjani/-

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