

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7404 of 2012

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Asha Devi W/O Late Indradeo Sharma Residence of Village - Mosadpur, P.S.
Mehandia, District – Jehanabad Petitioner/s

Versus

1. The Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University,
Kameshwar Nagar, Darbhanga
 2. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar
Nagar, Darbhanga
 3. The Secretary Of The Governing Body , Shri Ram Sanskrit College, Sarauti,
Rampur Chauram, District - Jehanabad
 4. The Princiapl, Shri Ram Sanskrit College, Sarauti Rampur Chauram, District
Jehanabad Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Dharendra Kumar Jha, Advocate
For the Respondent/s : Mr. Gyanand Roy, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 01-10-2018

Heard learned counsel for the petitioner and the
respondent University.

2. Pursuant to order dated 14.08.2018, Supplementary counter affidavit has been filed on behalf of University. In the supplementary counter affidavit, there is no denial of the fact that Narsing Narayan Sharma was appointed without the recommendation of the College Service Commission. However, statement has been made that on the post of Lecturer (Political Science) in the College in question Narsing Narayan Sharma was appointed on 30.12.1976 and thereafter the vacancy was advertised on 12.07.1979 in Daily Newspaper “Pradeep”. Thereafter the University granted approval to the services of Narsing Narayan Sharma and Annexure-D was



enclosed in support thereof. From Annexure-D, it appears that the University granted approval for a period of six months with a direction that the College may take appropriate action for sending requisition to the Bihar College Service Commission, so that the advertisement may be issued and selection process may be completed for recommendation by the Bihar College Service Commission. It is not in dispute that after Annexure-D, the post of Lecturer of Political Science was never advertised by the College Service Commission. In the meanwhile, the appointment process of Lecturer (Economics) was conducted by the College Service Commission and the husband of the petitioner was recommended against the post of Lecturer (Economics), but the University adopted dilly dally in granting approval of the appointment of the husband of the petitioner on regular basis on the recommendation of College Service Commission dated 17.02.1992.

3. The husband of the petitioner filed C.W.J.C. No. 9178 of 2000, which was disposed of on 04.05.2007 with a direction to the respondent Vice-Chancellor and the Registrar of the University to consider the proposal of the College for according the approval with regard to appointment of the petitioner vide letter no.54/94 dated 7th February, 1999. Notwithstanding the direction of this Court in C.W.J.W. No. 9178 of 2000, the University sat tight over the matter



and the petitioner filed M.J.C. No. 524 of 2009 for initiating Contempt proceeding against the University and its official for non-compliance of the direction issued by this Court in C.W.J.C. No. 9178 of 2000. During the pendency of the contempt application, the respondents have issued order granting approval of the services against the post available on retirement of Narsing Narayan Sharma. Considering the above, the contempt application was dropped with liberty to the petitioner to challenge the said decision. In view of the liberty granted by this Court in Contempt application, the present writ application has been filed.

4. It may be noted here that the original petitioner died before granting approval of his services and present application was filed by his widow. This writ application has been filed on 12.04.2012. During the course of hearing, it transpires that the husband of the petitioner, who was recommended for appointment against the post of Lecturer (Economics) by the College Service Commission on 17.10.1996 was not granted approval by the University for nearly 11 years and only after the order dated 04.05.2007, the respondent University issued letter contained in Annexure-13 approving the services of the husband of the petitioner w.e.f. 01.12.2008.



5. Considering the facts situation, the Court is of the view that vide Annexure-13, the respondent University has granted the approval of the services of the husband of the petitioner on 30.03.2010 w.e.f. 01.12.2008 i.e. from the date 12 years after the recommendation of the College Service Commission. The plea of the respondent that the post of Lecturer in Political Science, which was Modern Subject, was occupied by Narsing Narayan Sharma and as such the service of the husband of the petitioner was approved from the date of vacancy created on retirement of Narsing Narayan Sharma is totally misconceived and reflects the arbitrariness on the part of the University.

6. Having regard to the fact that the husband of the petitioner approached the Court in 2000 for a direction to the respondent University to approve his services is enough to understand the kind of mind set of the University and even after the order of this Court dated 04.05.2007 in C.W.J.C. No. 9178 of 2000, in 2010 i.e. after three years granted approval of the service and that too after the retirement of Narsing Narayan Sharma, indicates that the respondent University has acted in most arbitrary manner in the matter of grant of approval of service of the husband of the petitioner.

7. Today, Mr. Gyanand Roy, learned counsel



appearing on behalf of the University submits that since payment was made to Narsing Narayan Sharma against the post of Lecturer (Political Science) and as such the University is in difficulty in the matter of making payment, as there is only one post of lecturer in Modern subject available in the Sanskrit College. He submits that Narsing Narayan Sharma is now no more and as such there is no question of recovery from Narsing Narayan Sharma and to make payment to the present petitioner, as the State Government has already provided fund for payment on the post of one Modern subject and the University is in difficulty to make payment to two teachers in the Modern subject.

8. The difficulty of the University cannot be a ground to deny the lawful claim of any citizen, if the husband of the petitioner was legally appointed on the recommendation of the College Service Commission, then the lapse on the part of the University cannot be a ground to defeat the legitimate claim available to the husband of the petitioner. As it is now well settled that one cannot take advantage of its own wrong. Reference in this regard is made to the observation of Chief Justice Chagla of Bombay High Court in the case of **All India Groundnut Syndicate Limited Vs. Commissioner of Income Tax, Bombay City**, reported in **AIR 1954 Bombay 232**. The relevant part of the judgment is quoted hereinabove:



“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under Sub-section (2) of Section 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person--we take it that the Income-tax Department is included in that definition--can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default."

9. Considering the totality of the facts situation, the Court is of the view that the University cannot take advantage of their own lapse in delay in granting approval of the services of the husband of the petitioner and allowing Narsing Narayan Sharma to continue on the post without recommendation of the College Service Commission and make payment to Narsing Narayan Sharma and now taking the plea that it is not possible for the University to make payment to the petitioner (widow of late Indradeo Sharma).

10. In view of the discussion made above, the respondent University is hereby directed to ensure payment of all the arrears of salary of late husband of the petitioner to the petitioner treating the date of appointment as 17.10.1996. Necessary decision



with regard to consequential benefit must be taken by the University within a period of four months from the date of receipt/production of a copy of this order.

11. With the aforesaid, the writ application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.10.2018
Transmission Date	

