

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14792 of 2013

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Shamima Akthar W/O Late Md. Haque Moti @ Md. Shamsul Haque R/O
Village- Fatehpur, P.S- Sabour, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The T.M. Bhagalpur University, Bhagalpur, Through Its Registrar.
2. The Vice- Chancellor, T.M. Bhagalpur University, Bhagalpur.
3. The Pro Vice- Chancellor, T.M. Bhagalpur University, Bhagalpur.
4. The Financial Advisor, T.M. Bhagalpur University, Bhagalpur.
5. The Finance Officer, T.M. Bhagalpur University, Bhagalpur.
6. The Principal, Sabour College Sabour, District- Bhagalpur.
7. The State Govt. Auditor, At T.M. Bhagalpur University, Bhagalpur.
8. The State Of Bihar, Through The Principal Secretary, Human Resources Development Department Government Of Bihar, New Secretariat, Patna.
9. The Director, Higher Education, Human Resources Development Department, Government Of Bihar, New Secretariat, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Purushottam Kumar Jha, Advocate
For the University : Mr. Subodh Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 29-10-2018

Heard Mr. Purushottam Kumar Jha, learned counsel
appearing on behalf of the petitioner and Mr. Subodh Kumar Jha,
learned counsel appearing on behalf of the University.

2. The grievance of the petitioner in the present writ
petition is against the alteration in the date of absorption of the
services of the husband of the petitioner.



3. Learned counsel for the petitioner would submit that the husband of the petitioner was appointed on 22.12.1982 vide Annexure-1. The college in question was made constituent unit in 4th phase. The matter with regard to absorption of teaching and non-teaching employee of 4th phase colleges stood settled by the by the Apex Court vide its judgment in the case of **State of Bihar Vs. Bihar Rajya MSESkk Mahasangh, reported in (2005) 9 SCC 129**. The Apex Court in order to formalize the issue involved in the matter of absorption of services of teaching and non-teaching employees of 40 colleges, constituted a Commission of Justice S.C.Agrawal, a retired Judge and the Commission after marathon exercise submitted an exhaustive report which was accepted by the Apex Court and the Apex Court rejected all the objections against the report of Justice S.C. Agrawal Commission.

4. Mr. Subodh Kumar Jha, learned counsel appearing on behalf of the respondent-University would submit that Justice S.C.Agrawal Commission while considering the case of the college in question examined the case of the husband of the petitioner and referring to annexure-3 of the writ petition, he submits that the post on which the husband of the petitioner was appointed was found eligible for absorption which was sanctioned under the order dated 1st February, 1988 and as such



notwithstanding the appointment of the petitioner in the year 1982 for all practical purposes the husband of the petitioner would be entitled to the benefit of absorption from the date of availability of posts in terms of the findings recorded by Justice Agrawal Commission.

5. Mr. Purushottam Kumar Jha, learned counsel for the petitioner refers Annexure-8 to contend that the post on which the husband of the petitioner was appointed was sanctioned in the year 1982 and as such the University has committed error in modifying the date of absorption of the husband of the petitioner. He submits that the action of the University is mala fide for the reason that when the husband of the petitioner died only then the University became wise and made correction in the date of absorption of the petitioner, although the husband of the petitioner was paid salary prior to February, 1988 but in the matter of granting absorption the University has treated 1st February, 1988 as the date for grant of benefit. He submits that once the respondent-University has granted salary to the husband of the petitioner on account of his appointment in 1982, the University is obliged to recognize the services and approve the absorption with effect from the year 1982 itself.



6. The payment made prior to 1988 is not crucial in the matter of absorption in terms of Section 4 (1) (14) of the Bihar State Universities Act as held out by the Apex Court in Mahasangh's case (supra). The power of absorption of teaching and non-teaching staff on taking over of the college as constituent unit was vested with the University and the University was obliged to take decision in terms of the observations of the Apex Court in the Mahasangh case (supra) as well as the findings recorded by Justice S.C.Agrawal Commission. Since the report of Justice S.C.Agrawal Commission has attained finality and it has seal of approval by the Apex Court which admits that the post on which the husband of the petitioner was appointed was found eligible for absorption with effect from 1.2.1988, the Court does not find any infirmity in the action of the University. However, the payment made to the husband of the petitioner prior to 1.2.1988 was paid on account of rendering services and as such the respondents are precluded from taking any action for recovery of the amount which was already paid to the husband of the petitioner prior to 1988.

7. In view of the aforesaid factual position the University is required to consider the claim of the petitioner for grant of ACP/MACP and whatever benefits admissible treating the



date of absorption of the husband of the petitioner from 1.2.1988.
Necessary decision in this regard must be taken within a maximum
period of four months from the date of receipt/production of a
copy of this order.

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

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.10.2018
Transmission Date	

