

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7396 of 2012

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Prem Shankar Son Of Late Kumar Baidnath Prasad Singh Resident Of Village
- Rewasi, Police Station - Riga, District - Sitamarhi

... .. Petitioner/S

Versus

1. The State Of Bihar Through Principal Secretary, Human Resource Development Department, Government Of Bihar, Patna
2. Principal Secretary, Human Resource Development Department, Government Of Bihar, Patna
3. Director (Higher Education), Human Resource Development Department, Government Of Bihar, Patna
4. Dy. Director (Higher Education) Human Resource Development Department , Government Of Bihar, Patna
5. Vice-Chancellor, B.R.A. Bihar University, Muzaffarpur
6. Registrar, B.R.A. Bihar University, Muzaffarpur
7. Finance Officer, B.R.A. Bihar University, Muzaffarpur
8. Principal , Mahila Shilp Kala Bhawan, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Parasmani, Advocate
For the Respondent/s : Mr. Rajesh Kumar GP-8

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 29-06-2018

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

2. The petitioner claim to be appointed in the college in
question against the post of Lab Incharge, Botany Subject in the
year 1979. The college was made constituent in the year 1982.

3. Learned counsel for the petitioner, with reference to
the order dated 25.06.200, contained in Annexure-4, submits that
the case of the petitioner was considered by the University and
favourable recommendation was made to the State Government,
but the State Government has not taken any final decision on the



recommendation of the University for creation of post, so that the petitioner may be accommodated against the post of Lab Incharge in the Botany Subject.

4. On behalf of the State a counter affidavit has been filed in which stand has been taken that in terms of mandatory provisions under Section 35 of the Bihar University Act, without consent of the State Government any appointment is nullity and it cannot be approved.

5. Learned counsel for petitioner in reply referring to the judgment of the Full Bench in the case of Braj Kishore Singh and Ors. vs State of Bihar and Ors.: 1997 (1) PLJR 509 submitted that the University and the State is required to consider the case of the petitioner in the light of the judgment of the Full Bench.

6. It appears that following the judgment of the Full Bench the State Government took a policy decision to consider the case of the employees and laid down guideline in the letter of the State Government dated 17.11.1998 and as such decision on the recommendation of the University is required to be taken by the State Government and from the materials available on the record it is manifest that no such decision, one way or the other, was taken by the State Government.



7. Under the aforesaid circumstances, the writ petition is disposed of with a direction to the State Government to take a final decision so far as the request of the University for creation of additional post of Lab Incharge in the subject of Botany in the college in question and on the basis of objective materials and pass appropriate order.

8. If on a scrutiny the State does not find any justification in the claim of the petitioner taking into consideration the staffing pattern, the State is required to take final decision by reasoned order.

9. Accordingly, the Director Higher Education is hereby directed to consider the claim of the petitioner for regularization in terms of staffing pattern and letter dated 17.11.1998 within a maximum period of four months from the date of receipt/production of a copy of this order.

10. It is made clear that this Court has not expressed any opinion as to the claim of the petitioner for regularization. It is for the State to take decision in the light of the policy decision which was taken pursuant to the judgment of the Full Bench in the case of Braj Kishore Singh (supra).

11. Notwithstanding, the pendency of the matter before the Director Higher Education, the respondent-University is



required to consider the case of the petitioner for payment in the light of the judgment of the Apex Court in the case of State of Punjab Vs. Jagjit Singh: (2017) 1 SCC 148 and work out the entitlement of the petitioner for the period the petitioner has worked in the University within a maximum period of three months from the dated of receipt/production of a copy of this order. The payment will not be adversely affected by any adverse decision of the State Government .

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

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.07.2018
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