

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 5687 of 2016

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Bijay Kumar Mandal, S/o Late Baldeo Mandal, R/o Village + P.O.- Sahpur, P.O.-
Narayanpur, P.S.- Bihpur, District- Bhagalpur (Bihar).

.... Petitioner/s

Versus

1. The T. M. Bhagalpur University, Bhagalpur through its Registrar.
2. The Vice-Chancellor, T. M. Bhagalpur University, Bhagalpur.
3. The Financial Advisor, T. M. Bhagalpur University, Bhagalpur.
4. The Registrar, T. M. Bhagalpur University, Bhagalpur.
5. The Finance Officer, T. M. Bhagalpur University, Bhagalpur.
6. The University Auditor, T. M. Bhagalpur University, Bhagalpur.
7. The Principal, J.P. College, Narayanpur, District- Bhagalpur.
8. The State of Bihar, through the Principal Secretary, Education Department,
Government of Bihar, New Secretariat, Patna.
9. The Director, Department of Higher Education, Government of Bihar, Patna.
10. The In-charge, State Govt.'s Auditors Team, deputed at T. M. Bhagalpur
University, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Purushottam Kumar Jha, Advocate
For the State	:	Mr. Abbas Haidar, S.C. 16
For the University	:	Mr. Anjani Kumar, Sr. Advocate
		Mr. Ashhar Mustafa, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 27-09-2018

Heard learned counsel for the petitioner; State and T.M.

Bhagalpur University (hereinafter referred to as the 'University').

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

*“(i) Issuance of an Order, Direction or a Writ
in the nature of Certiorari Quashing Letter No. Acc/
298 dated 20.04.2015 (Annexure-26) whereby it has
been held that the action of the petitioner in
pressurizing the Respondent University for grant of
said claims is illegal, arbitrary and illegal, and
thereby the petitioner has been threatened that if in
future, the petitioner submits such representation,*



under such circumstances, legal action will be taken against the petitioner.

(ii) Issuance of an Order, Direction or a Writ in the nature of Mandamus commanding the authorities concerned of the Respondent University to fix all the pre and post retirement claims of the Petitioner { a retired Class III Employee (Electrician) in J.P. College, Narayanpur, a constituent unit of the T.M. Bhagalpur University, Bhagalpur}, strictly in accordance with the law laid down by the Hon'ble High Court Patna by order dated 28th August, 2008 in CWJC No. 10870 of 2008 (In the Matter of Letter of Sunny Prakash Vs The State of Bihar & Ors), which has been affirmed by the Apex Court by order dated January 18, 2013 passed in Civil Appeal No. 516 of 2013 (State of Bihar & Another V/s Sunny Prakash & Ors.), and consequent upon such calculation the Respondents concerned may be suitably directed to ensure the payment of all undue Pre and Post-retirement claims to the petitioner, that too, upon supplying the detailed statement of account of said claims to the petitioner in advance.

(iii) To hold and declare that the action of the Respondents concerned in not making the payment of post retirement claims of the petitioner, is highly illegal, arbitrary, malafide, malicious and unsustainable in the eye of law and on facts both and is fit to be deprecated by this Hon'ble Court in strong words.

(iv) Issuance of an order, direction or a writ in the nature of Mandamus commanding the authorities concerned of the Respondent University to make the payment of Penal Interest @ 12% per annum to the petitioner over the said claims, in addition to the payment of Statutory Interest @ of 5% per annum to the petitioner over his claim of pension & Gratuity.

(v) For grant of any other relief(s) to which the Petitioner may be found entitled to, in the facts and circumstances of this case."

3. The petitioner was initially appointed as an Electrician on daily wages by the Principal of the college with effect from



30.06.1982. Thereafter, by order dated 05.09.1983, he was appointed on the post of Electrician in the regular pay scale in the IVth Grade. Later on, with effect from August, 1985, the petitioner was appointed as Electrician in the IIIrd Grade. The petitioner finally superannuated from the post on 28.02.2012. Upon his application for grant of retiral benefits, the State Government Auditor in the University objected to such grant of retiral benefits on the ground that the post on which the petitioner was working was not sanctioned.

4. Learned counsel for the petitioner submitted that right from the beginning, there was no objection of any sort and in fact, the order of the University dated 29.11.1986 would go to show that the Vice Chancellor has approved payment of salary to the petitioner which was stopped for some time. It was further submitted that in terms thereof, the pay of the petitioner was also fixed by the Pay Verification Cell of the University and it was included in the budget which was forwarded to the State Government and the same was never objected to at any point of time and the petitioner kept drawing the salary as fixed by the University till his superannuation. Learned counsel further submitted that even with regard to the post being sanctioned or not, in terms of the order of a Full Bench of this Court in the case of **Braj Kishore Singh v. State of Bihar** reported as **1997(1) PLJR 509**, the post of Electrician is a deemed sanctioned



post in every college right from 1980 and, thus, even sans formal approval by the State Government, the same being a mere formality is only a requirement which can be done even *post facto*. It was further submitted that recently also a Division Bench of this Court in the case of **Jwala Prasad Singh vs. The T.M. Bhagalpur University & Ors.** in L.P.A. No. 1844 of 2012 by judgment and order dated 29.02.2016 has held that the applicant was entitled to counting his full service period for the purpose of all consequential benefits relating to retiral dues. It was submitted that the said order of the Division Bench has not been interfered by the Hon'ble Supreme Court and the appeal filed by the T.M. Bhagalpur University was dismissed on 08.08.2016 in Special Leave to Appeal (C) No(s). 22619 of 2016. Learned counsel submitted that a similarly situated person, namely **Nand Lal Mandal**, has also been granted such relief by a Division Bench of the Court in **L.P.A. No. 901 of 2008** by judgment and order dated 25.07.2011, which has attained finality. Learned counsel also relied upon an unreported decision of the Hon'ble Supreme Court in the case of **Netram Sahu vs. State of Chhattisgarh & Ors.** in Civil Appeal No. 1254 of 2018 dated 23.03.2018 where the prayer for payment of gratuity has been allowed by directing counting of the entire service period of the said petitioner including that spent on daily wages.



5. Learned counsel for the State submitted that the post on which the petitioner was working was never sanctioned by the State Government. However, on a specific query of the Court as to how such stand can be taken in view of the law laid down by the Full Bench of this Court in the case of **Braj Kishore Singh** (supra) and only *post facto* formalities are required, which could not negate the claim of the petitioner. Learned counsel for the State fairly submitted that the law laid down by the Court shall prevail.

6. Learned counsel for the University submitted that the initial appointment of the petitioner itself is not in accordance with Article 14 of the Constitution of India as the appointment letter discloses that it was on his mere application. It was further submitted that when the University had allowed payment of regular salary to the petitioner, the petitioner's name was shown under Grade IV and the petitioner having drawn the salary of Grade III was impermissible. Learned counsel further submitted that the post of the petitioner still not being sanctioned by the State Government, the petitioner drawing salary for a Grade III post is not sustainable. In this connection, learned counsel relied upon a decision of the Hon'ble Supreme Court in the case of **Upendra Singh v. State of Bihar** reported as (2018) 3 SCC 680, in which it has been held that the initial appointment not complying with the requirement of Article



14 of the Constitution of India cannot be regularized.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the petitioner is entitled to the relief claimed for. The respondents have not been able to demonstrate that the post of Electrician was never a deemed sanctioned post under the staffing pattern whereas, on the other hand, the petitioner has been able to bring materials to show that the same would come under a deemed sanctioned post, as in every college, such post was one of the basic post shown as per the staffing pattern. Further, the most striking feature in the present case is that whatever stand has been taken on behalf of the University, the same was never raised by them on their own volition and the petitioner ever put to notice at any point of time during his entire service career. Thus, in the present proceeding, the University cannot be allowed to raise such grievance and the Court would also not go into those aspects since till today such objection has neither been raised by the University nor the petitioner informed with regard to the same. Coming to the issue of continuance of the petitioner on a Grade-III post, the Court would only indicate that by order dated 29.11.1986, the basic import was that the Vice Chancellor had permitted the persons named in the letter, which included the petitioner, to get salary on regular basis which had been



stopped from April, 1986. The mere mentioning of the name of the petitioner under the broad heading of Grade-IV would not change the nature of the job which the petitioner was holding i.e., Electrician which undisputedly is a Grade-III post. Further, the Pay Fixation Cell of the University itself having fixed a particular scale of the petitioner which he was getting till his superannuation and which was also shown in the Budget of the college and duly approved and forwarded to the State Government, it is too late in the day for the University to turn back and take an entirely different and new stand in the present proceeding before the Court. The Court would further note here that it shall be presumed that the Budget/money sent by the State Government to the University, after being aware of the Budget details, as forwarded by the University in which the petitioner was shown to be working as an Electrician and drawing certain emoluments which was shown as a sanctioned post. As far as the case of **Upendra Singh** (supra) is concerned, the Court would only indicate that the same is with regard to the matter relating to claim for regularization which is not the issue involved in the present case as by the conduct of the parties, especially the University, the petitioner was already working upon due approval of the Competent Authority of the University on a deemed sanctioned post and such information was available with the State Government while they



were sending grant to the University for payment of salary etc. With regard to the claim of learned counsel for the University that the letter of appointment itself would disclose that it was merely on the application made by the petitioner, the Court would only observe that the language indicating that with reference to the application of the petitioner, he was being appointed may not be of much relevance for the reason that the petitioner has brought on record a certificate from the publisher of a daily newspaper, which was in circulation at the relevant time to indicate that the college had printed an advertisement in the Searchlight on 21.04.1982 asking for applications for various posts including that of Electrician. However, this is not a major issue for the reason that due to subsequent events and the petitioner having superannuated and all these issues being raised for the first time before the Court in the present proceeding, which is a writ application filed by the petitioner, the Court is not required to go into the merits of such issues. Further, in the opinion of the Court, the case of the petitioner is also supported by the decisions of the Courts, including the Hon'ble Supreme Court in the judgments referred to and relied upon by learned counsel for the petitioner.

8. In view of the discussions made hereinabove, the writ petition stands allowed. The respondents are directed to calculate and



pay the post retiral dues of the petitioner, along with statutory interest, taking into account the last pay drawn by him. The same be done within two months from the date of production of a copy of this order before the Vice Chancellor, Registrar and Finance Officer of the University.

9. Before parting, the Court would only observe that for claims the petitioner may have with regard to any benefit which according to him was due and payable during his service tenure, he shall be at liberty to file a detailed representation before the Competent Authority. If the same is filed within six weeks from today, the Authority shall look into the matter and decide the same by passing a reasoned order within four weeks thereafter.

(Ahsanuddin Amanullah, J.)

P. Kumar

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