

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7826 of 2012

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1. PRAMOD NARAYAN SINGH S/O SHRI HARDEO NARAYAN SINGH R/O VILLAGE- BISHNUPUR, P.S.- PHENHARA, DISTRICT- EAST CHAMPARAN
 2. SHAMBHU NATH SINGH S/O LATE DEO NARAYAN SINGH R/O VILLAGE- HAKHBARA, P.O. AND P.S.- PAKRIDAYAL, DISTRICT- EAST CHAMPARAN
 3. MAHESHWAR PRASAD SINGH S/O SHRI DURGA SINGH R/O VILLAGE AND P.O.- KRISHNA NAGAR, P.S.- MADHUBAN, DISTRICT- EAST CHAMPARAN
 4. LALDEO MAHTO S/O SHRI KAMALDEO MAHTO R/O PIPRA, P.O.-KALUPAKAR, DISTRICT- EAST CHAMPARAN
 5. BRAJ KISHORE SINGH S/O SHRI MAHENDRA PRASAD SINGH R/O VILLAGE- BARAHARAKH, P.S.- PAKRI DAYAL, DISTRICT- EAST CHAMPARAN
 6. CHANDESHWAR SINGH S/O LATE GORAKH SINGH R/O VILLAGE- MADANPUR, P.O.- SISWAPATNA, P.S.- KALYANPUR, DISTRICT- EAST CHAMPARAN

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECRETARY HUMAN RESOURCES DEVELOPMENT DEPARTMENT, BIHAR, PATNA
2. THE SECRETARY, HUMAN RESOURCES DEVELOPMENT DEPARTMENT, BIHAR, PATNA null null
3. THE B.R. AMBEDKAR BIHAR UNIVERSITY, MUZAFFARPUR, THROUGH ITS REGISTRAR
4. THE VICE CHANCELLOR, B.R. AMBEDKAR BHAR UNIVERSITY, MUZAFFARPUR
5. THE REGISTRAR, B.R. AMBEDKAR BIHAR UNIVERSITY, MUZAFFARPUR
6. THE PRINCIPAL, S.N.S. COLLEGE, MOTIHARI

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava
For the Respondent/s : Mr. Rajesh Kr.Verma SC-27

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 03-07-2018

This is the second round litigation. In the first round the petitioner have filed C.W.J.C. No. 1171 of 1991. The writ petition was disposed of vide order dated 1.4.1991 noticing the fact that



petitioner were working since 1980. The Court disposed of the writ petition with a direction to the respondent to take final decision as to the sanction / approval of the post on which petitioner were working. The Court also directed the respondents to take final decision on regularization of the petitioner within within two months in the science faculty of the college in question. The decision rendered on 01.04.1991 was not acted upon in as much as final decision was not taken by the respondents either on creation of post or regularisation of petitioner despite order contained in Annexure-7 dated 1.4.1991 petitioners once again approached this Court by way of filing present writ application in the year 2012. Petitioners claimed that they are working since 1980 and in terms of the Judgment of the Full Bench in Braj Kishor Singh's case 1997 (1) PLJR 509. The respondents are required to consider the case of the petitioner for absorption treating the post as deemed sanction in terms of the judgment of the full bench.

In the case of Brajkishor Singh the issue of deemed sanction post was considered by the full Bench. The full Bench considering the staffing pattern which is necessary for establishment of a college and held to be sine qua non of establishin a college answered the issue of reference. The objection of the State Government with reference to Section 35 of



the Bihar Universities Act was overruled by the full Bench with referenced to the judgment of the Constitution Bench in the case of **Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress, AIR 1991 SC 101** and full bench held out that Section 35 will not operate as bar in treating the post as deemed sanction if the posts are falling in the staffing pattern.

The State government formulated a guideline for consideration of the regulation of the non teaching employees in the light of the judgment of full bench in Brajkishor Singh, the said guide line contained in letter No. 1820 at 17.11.1998 is still in-operation.

Mr. Abhinav Srivastava submits that the guideline framed by the State government for considering the case for regularization of the appointee against the post falling under the staffing pattern is binding on the respondent State and the University and State is required to consider the case of those non-teaching appointed against the staffing pattern/deemed sanction post as petitioners were appointed prior to cut-off date 10.05.1986. He also submitted that in view of the judgment of the Division Bench contained in Annexure-7 the respondents are required to consider the case of petitioner as that decision is final and binding between the parties for the purpose of sanction of post and



considering the case of regularization. Mr. Shrivastava submitted that the petitioners have now put in 38 years of service and as such required to be considered for regularization in terms of Annexure-7 and the subsequent judgment of the full bench in 1997. Considering the facts that petitioners they have completed 38 years of service and they have requisite qualification for the post and they have discharged their duties in the college in question of uninterruptedly, their case requires at least to be considered for regularization as one time measure. Learned counsel appearing for the University does not dispute the fact that the petitioners are regularly working and they have requisite qualification and they have acquired experience. However, he express his difficulty in taking positive decision in favour of the petitioners saying that Section 35 mandates prior sanction of the State government in the matter of appointment either by way of direct recruit/ promotion or by way of transfer/absorption. Learned counsel for the State is not in a position to dispute the fact that they have formulated their own scheme for consideration of the case of non-teaching employee falling within the staff pattern.

It appears from the paragraph 14 of the counter affidavit that on 17.11.1998 vide letter no. 1820 the State



government has framed guidelines for consideration of the case for regularization of non-teaching employee under the staffing pattern. However, there is no averment that the case of the petitioners was ever considered in the light of letter no. 1820 dated 17.1.1998.

In view of the above the respondents are directed to examine the case of regularization of the petitioners in the light of the decision of the State Government contained in letter no. 1820 dated 17.1.1998 and take final decision within maximum period of four months from the date of receipt/ production of a copy of this order. While taking decision respondents have to respect the inter parte decision dated 01.04.1997 contained in Annexure-7 as inter parte judgments are binding on the party to Annexure-7.

Before I part with would like to refer to the Judgment of Apex Court in the case of State of Punjab Vs. Jagjit Singh reported in (2017)1 SCC 148, where the Apex Court has considered entitlement of ad hoc employee working in the institution for grant of pay on the principle of equal pay for equal work. The Apex Court noticing the judgment of the Constitution Bench in Uma Devi case clarified that regularization may not be available after the judgment of Uma Devi case but the principle of equal pay for equal work is available and as such the petitioners of



the present writ application are also entitled to protection of the judgment for equal pay for equal work as held out by the Apex court in the case of State of Punjab Vs. Jagjit Singh (Supra).

The University is required to work out the amount payable to the petitioner in the light of the judgment of State of Punjab Vs. Jagjit Singh (Supra) within the time framed indicated hereinabove.

With the aforesaid the writ application is disposed of.

(Anil Kumar Upadhyay, J)

banti/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.07.2018
Transmission Date	NA

