

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20964 of 2012

-
-
1. Umashankar Tiwary, S/O Late Brij Nandan Tiwary, R/o Village- Parewa, Post Office- Kapur Pakri, Police Station- Shikarganj, District- East Champaran
 2. Shashikant Mishra, S/O Sri Jay Kant Mishra ,R/O Village & Post Office- Karmawa, Police Station- Dhaka, District- East Champaran ... Petitioner/s

Versus

1. The Bhim Rao Ambedkar Bihar University through its Vice Chancellor, Muzaffarpur, Bihar
 2. The Registrar, Bhim Rao Ambedkar Bihar University, Muzaffarpur
 3. The Deputy Registrar Bhim Rao Ambedkar Bihar University, Muzaffarpur
 4. The Principal, Jawaharlal Nehru Memorial College, Ghodasahan, East Champaran
 5. The State of Bihar Through Secretary Higher Education Department, Govt. of Bihar, Patna ... Respondent/s
-
-

Appearance :

For the Petitioner/s	:	Mr. Arun Kumar, Advocate
For the Respondent/s	:	Mr. Madhaw Prasad Yadav, GP-23
		Mr. Arvind Kumar, AC to GP-23
For the University	:	Mr. Ajatshatru, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 26-11-2018

Heard learned counsel for the petitioners and the respondents.

2. The petitioners have filed the present writ application for a direction to the respondents to regularize their services.

3. Regularization is not the mode of appointment, as has been held out by the Apex Court in the Case of **Secretary, State of Karnataka and Ors. Vs. Umadevi and Others**, reported in **(2006) 4 SCC 1**. However, the College made constituent in 4th phase, their cases are required to be considered in terms of **State of Bihar & Ors. Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh & Ors.**, reported in **(2005) 9 SCC 129** where the Apex Court has



considered the scheme of Bihar State Universities Act, particularly Rule 4 (1) (14) of the Bihar State Universities Act, which provides for absorption of teaching and non-teaching employees on take over of the College as constituent unit.

4. Learned counsel for the petitioners submits that the petitioners were appointed by the Governing Body of the College on 27.05.1980 and they are continuously working since the initial date of their appointment, having requisite qualification for the post. He submits that similarly circumstanced other employees have been regularized/absorbed, but the respondents have treated the petitioners differently and they have been denied the benefit of absorption in terms of Section 4 (1) (14) of the Bihar State Universities Act.

5. It may not be out of place to mention here that in order to resolve the controversy, the matter was referred to Justice S.C. Agrawal Commission by the Apex Court in Mahasangh case and after marathan exercise, the Commission submitted its threadbare report on the issue of availability of post, eligibility of the candidate for absorption and the Apex Court accepted the report of Justice S.C. Agrawal Commission and thereafter issued direction to the concerned University to take final decision for absorption in terms of Section 4 (1) (14) of the University Act. At



the time when the University issued notification pursuant to the direction in Mahasangh Case (supra) controversy started as to entitlement of one or the other claimant for the post, which led to another round of litigation and in order to give quietus to the controversy, the matter was referred to the Full Bench of this Court and the Full Bench of this Court constituted a committee under the Chairmanship of Justice S.N. Jha (Retd.). Against the decision of the Full Bench, the matter was taken to the Apex Court in Krishna Nand Yadav Case and once again the Apex Court constituted initially Justice S.C. Agrawal Commission to examine the claim of the teaching and non-teaching employees for absorption at the anvil of report of S.C. Agrawal Commission, but subsequently on account of non-availability of Justice S.C. Agrawal (Retd), the Apex Court constituted Justice S.B.Sinha (Retd) Commission. The favourable report of justice S.B. Sinha (Retd) Commission was accepted and direction was issued by the Apex Court to absorb the services of those teaching and non-teaching employees, whose cases were favourably recommended by the Justice S. B. Sinha (Retd.) Commission.

6. So far as the teaching and non-teaching employees, whose case was rejected by the Commission, are concerned in their case liberty was granted by the Apex Court to approach the



High Court. After the order of the Apex Court in Krishna Nand Yadav case, this Court has occasion to examine the various aspect of the matter and the batch of writ petitions were disposed of including C.W.J.C. No. 17670 of 2017.

7. In view of the aforesaid factual background, the Court is constrained to dispose of the writ application with a direction to the respondents to examine the claim of the petitioners and if it is found that at the relevant time when the petitioners were appointed, regular post was available and they have the requisite qualification or in the event the petitioners have found regularly working and they have the requisite qualification for the post and there are existing vacancy on account of death, retirement or otherwise, the case of the petitioners may be considered for regularization against the available vacant post.

8. Necessary decision in this regard must be taken by the respondents within a period of four months from the date of receipt/production of a copy of this order.

9. With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.11.2018
Transmission Date	

