

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5858 of 2018

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1. Vishwajit Kumar, Son of Shri Ram Chandra Roy, Resident of Mohalla- Hathsar Ganj, P.O. & P.S.- Hajipur, District- Vaishali Pin Code- 844101.
 2. Bishwajit Kumar, Son of Shri Ram Janam Roy, Resident of Mohalla- Akilabad, P.O.- Gadai Sarai, P.S.- Hajipur Sadar, District- Vaishali Pin Code- 844101.
 3. Tej Narayan Kumar, Son of Shri Braj Kishor Roy, Resident of Mohalla- Hathsar Ganj, P.O. & P.S.- Hajipur, District- Vaishali, Pin Code- 844101.
 4. Niranjana Kumar, son of Shri Dinesh Roy, Resident of Mohalla- Pokhara, East of Yadav Chowk, P.S. Hajipur Town, District- Vaishali Pin code- 844101.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
2. B.R. Ambedkar Bihar University, Muzaffarpur through its Registrar.
3. Vice-Chancellor, B.R. Ambedkar Bihar University, Muzaffarpur.
4. Registrar, B.R. Ambedkar Bihar University, Muzaffarpur.
5. The Principal Jamuni Lal College, Hajipur (Vaishali).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava
For the Respondent/s : Mr. KAMESHWAR KUMAR-GP17
Mr. Amit Bhushan, A.C. to G.P.-17.
For the University : Priyank Deepak, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 04-05-2018

Heard learned counsel for the petitioner, counsel appearing on behalf of the State as well as counsel for the respondent university.

Necessity knows no law is a well-settled proposition. The Principal of the college has sent a suggest to the university that institution cannot run in the absence of a minimum support staff in order to meet the requirement of day-to-day work load. The principal after publishing the advertisement in the newspaper has inducted the support staff on daily wages basis. After engagement on daily wage basis following advertisement in the newspaper and selection, the university vide Annexure –11 took stand that university



will not bear the expenditure for payment of the employees engaged daily wage basis. One cannot think of imparting education in institution which is a part of the constituent unit of the university to run the academic activities without adequate support staffs. At the relevant time, considering minimum requirement, staffing pattern was formulated and based on staffing pattern, the Full Bench has decided the Braj Kishore Singh's case reported in **1997(1) PLJR 509** where the rigorous of Section 35 of the Bihar State University Act was read down by the Full Bench in the light of the Apex Court decision in the case of **Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress AIR 1991 SC 101** and following the judgment of the full Bench, the State Government formulated where 98 institution of the cases for regularization the present case refers to payment of daily wages to the person who have worked in fulfilling all the responsibility of the institution as a supporting staff. Petitioners have not approached this Court for regularization but they have worked after falling the selection process, including advertisements and as such, the petitioners are entitled to payment of wages. The entire action of advertisement and their encroachment and taking education work within the knowledge of university and the university cannot now take the plea that the university has no obligation for payment of salary / remuneration to this petitioner. No work is gratitude. If the petitioners work, they are entitled to payment of remuneration. Otherwise it will violate the Article 21 and 23 of the Constitution of India as taking work regard series of judgment right from Asiad Workers case **AIR 1982 SC 1473** on point that State and instrumentalities cannot exploit the poor workmen on account of their poor



bargaining power. In the instant case, the Court is of the considered view that after taking work denying remuneration to the petitioner is violation of the principle contained in Article 21 and 23 and it amounts to beggary.

In the aforesaid background of the fact, the Court direct the University to ensure payment of remuneration within a maximum period of 60 days from the date of receipt / production of copy of this order. They cannot be heard saying that Section 35 applies in the case of payment and, therefore, without the approval of the State Government, the Core Principle discussed in Braj Kishore Singh’s case is applicable for considering the necessity principle as justification for engagement of petitioners. It is made clear that the Court is not concerned from where the payment has to be made, the Court is only concerned that the payment has to be made to this poor people. The university and the college has to work out the mechanism for payment of remuneration within the time frame indicated hereinabove. The university may consider the communication of the principal as contained in Annexure -12 in the matter of deciding the claim for payment of remuneration.

With the aforesaid, this writ application stands disposed of.

(Anil Kumar Upadhyay, J)

Sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

