

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21325 of 2013

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Kanti Sinha W/O Late Umesh Prasad Singh Resident Of Village- Dharampur,
P.S- Bind, District- Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Human Resources Department, Higher Education Govt. Of Bihar, Patna.
2. Principal Secretary, Human Resources Department, Govt. Of Bihar, Patna.
3. Magadh University, Bodh Gaya Through Its Registrar
4. Vice Chancellor, Magadh University, Bodh Gaya.
5. The Registrar, Magadh University Bodh, Gaya.
6. The Finance Officer, Magadh University, Bodh- Gaya.
7. The Principal, Nalanda Mahila College, Bihar Sharif.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pramod Kumar, Advocate
For the State	:	Mr. Kamlesh Kishore, AC to SC 12
For the University	:	Mr. Shivendra Kishore, Sr. Advocate
		Mr. Ritesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 07-12-2018

The grievance of the petitioner in the instant case is against the order dated 13.3.2013, Annexure-10 passed by the Registrar, Magadh University notwithstanding the fact that the matter was pending at the level of the State Government.

From perusal of Annexure-10, it is evident that the matter was referred by the University to the Director, Higher Education on 26.6.2012 with a request to take appropriate decision with regard to the claim of the petitioner but no decision was taken by him.



On behalf of the respondent-State a counter affidavit has been filed on 16.2.2015 in which in paras 6 to 17 following stand has been taken:

“6. That it is stated that the aforesaid appointment was made in the light of the vacancy caused by termination of service of one Md. Habib, a typist and accordingly the husband of the petitioner was appointed vide letter dated 7.7.1981.

7. That it is stated that this is an admitted fact that at the time of the conversion of college into a constituent unit i.e. on 24.01.1981 there was no sanctioned post of non-teaching staffs. Hence the deceased husband of the petitioner was appointed on unsanctioned post of typist by the adhoc committee of the college in question.

8. That it is stated that subsequently the State Government vide letter no. 631 dated 25.05.2009 sanctioned only one post of typist and one Jaykant Upadhaya was adjusted on the said sanctioned post as he was appointed on 06.02.1979 prior to the husband of the petitioner.

9. That it is stated that it is an admitted fact that the husband of the petitioner was never appointed on a valid sanctioned post notwithstanding that he was allowed to continue to work similarly to that of a regular appointed employee.

10. That it is stated that the concerned university is liable to answer as to under what circumstances the husband of the petitioner was allowed to continue and granted all the benefits like a regular employee.



11. That it is stated that in the aforesaid background, the petitioner came before this Hon'ble Court by filing a writ application bearing CWJC No. 5983 of 2012 (Kanti Sinha Vs The State of Bihar & Ors.) for payment of retiral/death benefits to her, which was disposed of vide order dated 29.3.2012 (Annexure-8 of the writ application with following direction:

“..... Let the petitioner file a representation before the Registrar of the University together with a copy of the present order within five weeks whereafter the said respondent shall examine the same and take appropriate decision thereon as quickly as possible preferably within three months. In case the decision to be taken by the said respondent admits any of the claim (s) of the petitioner, it is expected the same shall be authorized in favour of the petitioner within five weeks thereafter. In case of denial of any of the claim(s) the said respondent shall pass a reasoned order within the aforesaid time which shall be communicated to the petitioner.”

12. That it is stated that thereafter the petitioner filed a contempt application bearing MJC No. 4584 of 2012 for alleged non-compliance of the aforesaid order dated 29.03.2012 passed in CWJC No. 5983 of 2012 which was disposed of vide 17.07.2013 (Annexure-9 of the writ application) in the light of the order dated 13.03.2013 passed by the concerned university with a liberty to the petitioner to seek appropriate remedy before appropriate forum/authority in accordance with law.

13. That it is stated that in the proceeding of the contempt application the department had filed a show cause in



detail giving their stand as well as position of law prevailing in connection with regularization of an employee, appointed on an unsanctioned post.

14. That in this connection it is further stated that the department has categorically stated in the said show cause filed in the proceeding of the aforesaid contempt application that the order dated 13.03.2013(impugned herein) passed by the university is contrary to the order of this Hon'ble Court passed in CWJC No. 5983 of 2012 and the concerned university is not justified in referring the matter to the State Government for necessary direction for the illegality committed by it for the reason mentioned herein below:

(i) That power to make appointment against any Class-III or Class-IV post in a constituent College is vested only with the Vice Chancellor of the University under Section 10(6) of the Bihar State University Act.

(ii) That in this connection it is also relevant to state here that when the State Government vide letter dated 17.11.1998 had sanctioned 30 non-teaching post in the College including one post of typist, then the continuance of the late husband of the petitioner on unsanctioned post was contrary to the provisions of the Universities Act.

(iii) That in the letter dated 18.03.2013, the university has also mentioned that the university in the year 2007 had also wrote a letter to the State Government to sanction further post including one post of typist. In this connection it is humbly stated that the late husband of the petitioner died on 16.02.2006 and therefore mentioning of creation of one post of typist for the case of the late husband of the petitioner is malafide on part of the University.



(iv) That it is submitted here that the University must explain such illegality committed by them and further there is specific provision in Section 35(3) of the Bihar State University Act, 1976 for recovery of the illegal payment made from the officer responsible for such illegality.

15. That it is important to mention here that the vice chancellor of the concerned university has also stated in the impugned order that “in my opinion family pension is admissible to only those employee who had worked against sanctioned post.”, despite that the matter has been referred to the State Government for the reason best known to the concerned University.

16. That it is stated that despite a categorical objection raised by the department in the proceeding of the contempt application, the concerned university instead of rectifying its mistake, referred the matter to the State Government which is nothing but contemptuous.

17. That it is relevant to mention here that vide order dated 01.02.2013, passed in CWJC No. 267 of 2010 (Reported in 2013 (1) PLJR 964) and other analogous cases the Full Bench of this Hon’ble Court has been pleased to sum up the conclusions and answer the reference as follows:

(A) Uma Devi (supra) prohibits regularization of daily wage, casual, ad hoc and temporary appointments, the period of service being irrelevant;

(B) An illegal appointment void Let this case go out of my list and be placed before another appropriate Bench under the orders of Hon’ble the Chief Justice. Initio made contrary to the mandate of Article 14 without ope



competitive selection cannot be regularized under any circumstances.

(C) Irregular appointments can be regularized if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

(D) The appointment must not have been an individual favour do led out to the appointee alone and the person must have continued in service for over ten years without intervention of any court orders.”

From the pleadings it appears that the college was made constituent of the Magadh University in the third phase in 1981. On the date of conversion of the college as constituent unit, no post of non-teaching staff was sanctioned by the State. One post of Typist was sanctioned on 25.5.2009 and on the aforesaid sanctioned post one Jaykant Upadhaya was adjusted who was appointed on 6.2.1979. The aforesaid facts are clinching on the point that the University was functioning without any sanctioned post of non-teaching employee. One cannot visualize that a constituent institution was functioning without any non-teaching employee even after the post was sanctioned after 28 long years of the college made constituent unit. It may be noted here that the



Full Bench of the Patna High Court has considered the requirement of non-teaching employee in colleges affiliated and referring to the staffing pattern, the Full Bench in ***Braj Kishore Singh v. State of Bihar : 1997 (1) P.L.J.R. 509*** held out that as per staffing pattern whether the State Government has sanctioned the post or not the post shall be treated to have been sanctioned.

Considering the aforesaid fact, the Court does not find any substance in the submissions of the University and the State that the post of non-teaching employee was sanctioned after 28 years of taking over of the college was only admissible for consideration and as such the petitioner being widow of Umesh Prasad Singh, was not entitled to consideration.

The Full Bench has occasion to read down Section 35 of the Bihar State Universities Act which provides for prior approval referring to the judgment of the Apex Court in the case of **Delhi Transport Corporation vs D.T.C. Mazdoor Congress : AIR 1991 SC 101**. The judgment of the Full Bench is clinching on the point that sanction of post is not necessary for consideration. If the posts are available within the staffing pattern, those posts shall be treated to be deemed sanctioned post and in view of the above, the Court has no hesitation in holding that the action of the respondents rejecting the claim of the petitioner on the ground that



the post of Typist was sanctioned on 25.5.2009 and as such there was no post for consideration of the case of the husband of the petitioner for adjustment.

The husband of the petitioner died while working in the Nalanda Mahila College which was made constituent on 24.1.1981. Her husband was appointed on 7.7.1981 and continued till 16.2.2006 when he died after serving 25 years. The decision of University unceremoniously held out that the husband of the petitioner though working for 25 long years, was not entitled to any benefit on account of the fact that the State Government took 28 years time in sanctioning the post even after the college was made constituent.

Applying the principle laid down by the Full Bench, the Court is left with no option but to hold that the post available within the staffing pattern is to be taken into consideration for the purpose of deciding the claim of the husband of the petitioner and consequential benefits of the petitioner and not the letter no. 631 dated 25.5.2009, whereby the State Government sanctioned post in the college in question.

In the totality of the fact situation, Annexure-10 cannot sustain. It is accordingly quashed. Since the decision was taken as default i.e. indecisiveness on the part of the Director on the request



made by the University on 26.6.2012, the Court directs the Director, Higher Education to take fresh decision in the matter of regularization of the services of the husband of the petitioner within deemed sanctioned post in terms of the judgment of the Full Bench in ***Braj Kishore Sing's*** case and the follow up decision of the State Government contained in letter no. 1820 dated 17th of November, 1998. Necessary decision in this regard must be taken by the respondent-Director, Higher Education within a maximum period of four months from the date of receipt/production of a copy of this order.

While taking decision the respondent-Director, Higher Education is required to follow the law laid down by the Full Bench in ***Braj Kishore Singh's*** case and their own policy decision contained in letter no. 1820 dated 17.11.1998 and they shall not be governed by their decision sanctioning the post dated 25.5.2009.

It goes without saying that once the Director, Higher Education decides the claim of the petitioner in the light of the decision of the Full Bench and the letter no. 1820 dated 17.11.1998, the consequential benefits must reach the petitioner accordingly.



The decision taken by the Director, Higher Education will be binding on the University including the Patliputra University.

With the aforesaid, the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.12.2018
Transmission Date	NA

