

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18123 of 2017

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Maitreyee Chattopadhyaya, wife of Sri Champak Mukherjee, resident of A-4,
Tara Tower, Exhibition Road, Patna, P.S.- Gandhi Maidan, Town and District-
Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education,
Government of Bihar, Patna.
2. Additional Secretary, Education Department, Govt. of Bihar, Patna.
3. Joint Secretary, Education Department, Govt. of Bihar, Patna.
4. Deputy Secretary, Education Department, Govt. of Bihar, Patna.
5. Director, Higher Education, Bihar, Patna.
6. Smt. Deepa Bariar, W/o Sri Ravineshwar Dayal, at present working as Head
of the Department of Chemistry, Government of Women's College,
Gardanibagh, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Banwari Sharma with Mr. Shiv Kumar and Mr. Sahjanand Sharma, Advocates
For the State	:	Mr. Ashutosh Ranjan Pandey, AAG 15 with Mr. Priyadarshi Matri Sharan, AC to AAG 15
For the Respondent No. 6	:	Mr. Rajendra Narayan, Sr. Advocate with Mr. Mukeshwar Dayal and Mr. Vikash Mohan, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 06-12-2018

Heard learned counsel for the petitioner; State and
respondent no. 6.

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

*“That the present application is for issuance of a
writ in the nature of writ certiorari for quashing*



the notification issued vide memo no. 1119 dated 08.08.06 under the signature of the Commissioner cum Secretary, Human Resources Development (Higher Education) Department, Bihar (Now Education Department, Bihar) as contained in Annexure-6, whereby and whereunder the service of the respondent no. 6 has been regularized from 08.04.86, contrary to the judgment dated 08.03.1997 passed in L.P.A. No. 107/1996 by this Hon'ble Court and also without affording any opportunity of hearing to the petitioner whose seniority has been adversely affected. And further also for quashing the corrigendum issued vide memo no. 1478 dated 06.11.06 under the signature of the Commissioner cum Secretary, Human Resource Development (Higher Education) Department, Bihar, as contained in Annexure-7, by which after amending the earlier notification no. 252 dated 14.02.98 as contained in Annexure-6, the service of the respondent no. 6 has been regularized from the date of her joining on 09.04.86. And further a writ in the nature of writ of mandamus directing the respondent authorities to declare the petitioner senior to the respondent no. 6 for all practical purposes. And/or Pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. The undisputed facts are that the petitioner was appointed directly on the recommendation of the Bihar Public Service Commission as a Lecturer in Government Women's College, Gardanibagh on 18.05.1987. The respondent no. 6 was engaged on 09.04.1986 as Lecturer in the same college, but on a



purely daily wages basis as a stop-gap arrangement by the Director, Education Department, Government of Bihar. The respondent no. 6 continuing in such capacity had moved the Court in C.W.J.C. No. 3902 of 1991 in which, by judgment and order dated 04.12.1995, it was directed for regularizing her services from the date of her appointment in terms of Section 4 of the Bihar Gazetted Officers Ad hoc Appointment Regulation Act, 1987 (hereinafter referred to as the 'Act'). The Government challenged this order before the Division Bench in L.P.A. No. 107 of 1996 in which by judgment and order dated 08.03.1997 it was held that the respondent no. 6 was not entitled to derive any benefit under the Act. However, the Division Bench had directed that in view of the decision of a Bench of this Court in the case of **Vijay Kumar vs. State of Bihar** reported as **1991(1) PLJR 747**, the service of respondent no. 6 be also regularized. This order was upheld by the Hon'ble Supreme Court by order dated 09.07.1997 in Special Leave to Appeal (Civil) No.(s) 11130 of 1997. The authorities in terms of the orders of the Court had initially regularized the service of the respondent no. 6 by order dated 14.02.1998. However, it was later modified by a subsequent notification dated 08.08.2006 by which the effective date of regularization was made



08.04.1986. The same was thereafter again modified to 09.04.1986 by notification dated 06.11.2006.

4. The petitioner, who claimed to have a better status in law, as she was directly appointed in terms of the recommendation of the Bihar Public Service Commission had initially represented to the authorities that she should be made the Incharge Principal of the college. The same was not accepted and again, in view of the impending superannuation of Mrs. Nutan Sahay, the then incumbent Incharge Principal, she represented on 08.04.2016 for being made Incharge Principal. Though, initially, the respondent no. 6 was made Incharge Principal by order dated 03.05.2016, but later, on the representation of the petitioner, she was made Incharge Principal by order dated 17.06.2016. However, the respondent no. 6 assailed the same in C.W.J.C. No. 12717 of 2016 on the ground that once her service was regularized with effect from 09.04.1986 and the petitioner entering into service on 18.05.1997; she, being senior, should be made Incharge Principal. The said writ petition was allowed by judgment and order dated 20.11.2017 by quashing the order by which the petitioner was made Incharge Principal and holding that the respondent no. 6 was senior to her. This finding was in the background that till then the order to regularize the service of the petitioner with effect from



09.04.1986 subsisted without any interference. However, the petitioner was given liberty to agitate the matter with regard to her claim, both with regard to seniority and initial appointment. In terms of such liberty, the petitioner has filed the present writ petition.

5. Learned counsel for the petitioner submitted that when the initial order for regularizing the service of the petitioner was passed on 04.12.1995 in C.W.J.C. No. 3902 of 1991, the Court had held that she was entitled for her regularization from the date of her appointment in terms of Section 4 of the Act, which had the provision for doing so. It was submitted that the same being taken before the Division Bench in L.P.A. No. 107 of 1996 having been interfered to the extent where it was categorically held that the respondent no. 6 was not entitled to derive any benefit under the Act, the service of the respondent no. 6 could not have been regularized from the date of her initial appointment. Learned counsel submitted that the Division Bench had only granted indulgence holding that the service of the respondent no. 6 was fit to be regularized relying upon the judgment in the case of **Vijay Kumar** (supra). Learned counsel contended that the said decision of this Court was only with regard to regularization, but the date from which such regularization could be granted was not the issue



in the case of **Vijay Kumar** (supra). Learned counsel submitted that initially the authorities had rightly regularized the service of the petitioner with effect from 14.02.1998 but later on without any justification or order of any Court, shifting back of the date to the date of her initial appointment, i.e., 09.04.1986 is absolutely illegal. Learned counsel submitted that the petitioner was not aware of any internal communication of the authorities with regard to showing the respondent no. 6 senior to her, as would be clear from her representation filed before the authorities on 08.04.2016, in which she has categorically written that she is the senior-most teacher and, thus, should be made the Incharge Principal of the college. Learned counsel submitted that the petitioner being ignorant of the authorities having shifted back the date of regularization of respondent no. 6 to 09.04.1986 is further borne out by the fact that initially even the Department itself had accepted such position and, thus, the notification making the respondent no. 6 as the Incharge Principal dated 03.05.2016, on the representation made by the petitioner, was withdrawn and the petitioner was made Incharge Principal by order dated 17.06.2016. Learned counsel submitted that, thus, there is no deliberate or wilful laches on the part of the petitioner in coming to the Court. It was further contended that the present writ



application also deserves to be heard on merits in view of the liberty given by the Court itself in its judgment and order dated 20.11.2017 in C.W.J.C. No. 12717 of 2016. In support of his contention, learned counsel referred to and relied upon the decision of the Hon'ble Supreme Court in the case of **Moon Mills v. Industrial Court, Bombay** reported as **AIR 1967 Supreme Court 1450**, the relevant being at paragraph no. 6, for the proposition that mere delay cannot defeat rights. He further relied upon the decision of the Hon'ble Supreme Court in the case of **Basic Shiksha Parishad v. Sugna Devi** reported as **(2004) 9 Supreme Court Cases 68**, for the proposition that the grievance of the petitioner was a continuing cause of action and, thus, the question of limitation does not arise, the relevant being at paragraphs no. 5 and 6. He also relied upon a decision of the Hon'ble Supreme Court in the case of **State of Haryana v. Haryana Co-operative Transport** reported as **AIR 1977 Supreme Court 237**, for the proposition that if the High Court finds that a person appointed to any office is not eligible or qualified to hold that post, the appointment has to be declared invalid by issuing a writ of *quo warranto* or any other appropriate writ or direction and it was also the duty of the High Court to strike down usurpation of the office. Learned counsel submitted



that the Division Bench in L.P.A. No. 107 of 1996 relying on the decision in the case of **Vijay Kumar** (supra) had directed for regularization of the service of the respondent no. 6. Learned counsel drew the attention of the Court to the concluding portion of paragraph 13 of the said judgment in which the Court had only directed for regularizing the service of the petitioner as Lecturer with the same salary and allowance which was being paid to a regular and permanent Lecturer. It was thus, submitted that such direction of the Division Bench was only to regularize, but after specifically holding such regularization could not be under the Act by which the benefit of regularization would be from the date of initial appointment.

6. Learned counsel for respondent no. 6 submitted that the writ petition deserves to be dismissed on the ground of delay and laches alone. It was submitted that the petitioner working in the same college as the respondent no. 6 was all through aware of the developments and also the fact that the respondent no. 6 had joined as Lecturer more than one year prior to the petitioner having joined the college. It was submitted that the respondent no. 6 had been granted the benefit of regularization with effect from 09.04.1986 which remained unchallenged and has now attained finality, which the Court may not disturb. Learned counsel drew



the attention of the Court to the fact that the petitioner had also made a representation in the year 2013 itself, for being made the Incharge Principal and on such representation when the authorities had called for the seniority list from the college, the petitioner was shown junior to the respondent no. 6 by Letter No. 403 dated 27.08.2013. It was, thus, contended that right from the year 2013 the petitioner, being aware of her position, being below that of the respondent no. 6, challenge to the same only in the year 2017, i.e., after more than four years, clearly indicates delay, laches and further, acquiescence on her part. Learned counsel submitted that in any view of the matter, as the respondent no. 6 is due to superannuate on 31.12.2018, i.e., after a few weeks from today, coupled with the fact that the petitioner would then be made Incharge Principal, as she is the next senior-most teacher, on this ground also the Court may not interfere. Learned counsel further drew the attention of the Court to the decision of a Bench of this Court dated 10.08.2006 by which M.J.C. No. 1352 of 1996 was disposed off on the basis of the stand of the authorities in their supplementary show cause, that the regularization of the respondent no. 6 shall have effect from 8th April, 1996 and accordingly, she shall also be given the financial benefit of such regularization. Learned counsel submitted that the same was done,



but later on the date was shifted to 9th April, 1996 in view of the fact that though the petitioner was given appointment letter on 8th April, 1996, but she actually joined the post on 9th April, 1996. It was further contended that the petitioner has till date not challenged Letter No. 403 dated 27.08.2013 by which she is shown to be junior to respondent no. 6. Learned counsel referred to and relied upon the decision of the Hon'ble Supreme Court in the case of **S.S. Balu v. State of Kerala** reported as (2009) 2 Supreme Court Cases 479, the relevant being at paragraph no. 17, for the proposition that delay defeats equity. He also referred to the decision of the Hon'ble Supreme Court in the case of **Ghulam Rasool Lone v. State of Jammu and Kashmir** reported as (2009) 15 Supreme Court Case 321, the relevant being at paragraphs no. 13, 14 and 16, for the same proposition. Learned counsel further submitted that the decisions relied upon by learned counsel for the petitioner do not apply to the facts and circumstances of the present case and, thus, are of no help to her.

7. Learned counsel for the State submitted that he had nothing to add with regard to the facts which have already been brought before the Court by the parties. However, on a direct query of the Court, as to what was his instructions on the stand that the petitioner now is the senior-most teacher and would be made



the Incharge Principal of the college with effect from 01.01.2019, he submitted that he had received instructions from the authorities, but because of paucity of time he could not bring the same on record. However, he submitted that the stand is categorical that the authorities do not dispute the fact that now it is the petitioner, who is the senior-most and upon superannuation of the respondent no. 6 on 31.12.2018, she would be made the Incharge Principal of the college in question.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the petitioner has made out a case on merits. The mere fact that the petitioner was appointed on *ad hoc* basis on daily wages on 08.04.1986 and the petitioner being substantially appointed on the post upon recommendation of the Bihar Public Service Commission, though from 18.05.1997, is a vital factor. In the present case, the Court is not required to go into the merits as to from when the respondent no. 6 deserves to be regularized for the reason that the same has been dealt with by the Court earlier in C.W.J.C. No. 3902 of 1991 and thereafter in L.P.A. No. 107 of 1996. By judgment and order dated 04.12.1995, the learned Single Judge in C.W.J.C. No. 3902 of 1991 had directed for regularization of the service of the petitioner with effect from the date of her



appointment in terms of Section 4 of the Act as she was held deemed to have become regular from the date of appointment. The same being overturned by the Division Bench in its judgment and order dated 08.03.1997 by specifically holding that the respondent no. 6 was not entitled to derive the benefit under the Act, leads to no other conclusion save and except, that her service was not to be regularized with effect from the date of her initial appointment. However, the Court went further and took the view that at least her service required to be regularized in terms of the order of the Court in another case, i.e., **Vijay Kumar** (supra). Thus, as per the order of the Division Bench in L.P.A. No. 107 of 1996, which was not interfered by the Hon'ble Supreme Court, the authorities were precluded from regularizing the service of the respondent no. 6 from the date of her initial appointment and the same had to be done from a prospective date. However, for reasons best known to the authorities, it seems that they have finally taken the view that her service was required to be regularized from the date of her initial appointment, which the Court had categorically held could not have been done. In view of the specific finding of the Division Bench, the contention of learned counsel for the respondents that the petitioner was required to assail the order at the relevant time and at least in the year 2013, in view of the seniority list as



contained in Letter No. 403 dated 27.08.2013, the Court would only observe that the same cannot be considered to be a seniority list in the legal sense of the term and, at best, it was only a communication from the Principal of the college to the authorities. Moreover, from the application filed by the petitioner dated 08.04.2016, copy of which has been brought on record by way of Annexure-14 to the supplementary affidavit filed on behalf of the petitioner, where she has clearly stated that she, being the senior-most teacher, upon superannuation of Smt. Nutan Sahay on 30.04.2016, should be made Incharge Principal, the Court finds that the stand taken of the petitioner being unaware of the service of the respondent no. 6 being regularized with effect from 09.04.1986, cannot be summarily brushed aside and rejected. Moreover, the petitioner being granted the specific liberty to assail the decision by the Court in the writ application filed by the respondent no. 6, i.e., C.W.J.C. No. 12717 of 2016 by order dated 20.11.2017, would also give the petitioner strength to maintain the present writ application. The Court also finds the contention of learned counsel for the petitioner that the indulgence given by the Division Bench in L.P.A. No. 107 of 1996 was based solely on the principle of giving parity to respondent no. 6 in terms of the order of the Court in another case, i.e. **Vijay Kumar** (supra), perusal of



which discloses that the direction was only to regularize the service and not with any direction to do so from the date of her initial appointment. The Court would also note that initially the authorities had issued notification regularizing the service of respondent no. 6 by notification dated 14.02.1998 and the tenor of the notification clearly indicated that it was not with retrospective effect which, thus, implies that such regularization was with effect from the date of the notification itself. However, the same being modified by order dated 08.08.2006/06.11.2006 is not clear to the Court as to the circumstances behind issuance of the same. At this juncture, the Court would record the stand taken by learned counsel for the State that the contempt application was pending and, as the Court has been informed, the Principal Secretary of the Department had also appeared in the contempt case, i.e., M.J.C. No. 1352 of 1996, leading to issuance of notifications dated 08.08.2006 and 06.11.2006. The Court is also not clear as to under what circumstances M.J.C. No. 1352 of 1996 was pressed after order of the Division Bench dated 08.03.1997 in L.P.A. No. 107 of 1996, since the Division Bench had passed a detailed order and had interfered in the order on the writ petition and had given fresh directions in the matter and, thus, if at all, the respondent no. 6 could have alleged contempt, it could have only been before the



Division Bench and with regard to the judgment and order dated 8th March, 1997 in L.P.A. No. 107 of 1996.

9. Be that as it may, the Court would not go into such issue. Coming back to the merits of the matter, in view of the discussions made hereinabove, the Court finds that in terms of the order of the Court dated 08.03.1997 by the Division Bench in L.P.A. No. 107 of 1996, the service of the petitioner could not have been regularized from the date of her initial appointment, as has been done. The Court finds the same to be unsustainable in the eyes of law.

10. Having said that, the Court is now at crossroads as to what consequent order should be passed. This has been occasioned from the fact that the respondent no. 6 would be superannuating within a few weeks and also the State has taken a categorical stand before the Court that the petitioner being the next senior-most shall be made the Incharge Principal of the college and she would be having a tenure of almost two years, and thus, the Court has to take a call as to whether at the fag end of the service of the respondent no. 6, should the final order be so drastic so as to change and upset the position which has continued for quite some time.



11. Having given serious thoughts to the issue, the Court would choose not to upset the settled things which have continued for long and only on this ground, a direction for change of date of regularization of the service of respondent no. 6 is not being issued, even though the Court has arrived at a conclusive finding that she was not entitled to the same.

12. Accordingly, the writ petition stands disposed off without giving any direction for consequential correction in the date of regularization of the service of respondent no. 6 as it would entail civil and penal consequences for her at the fag end of her career, which, the Court has consciously avoided with a view to secure the ends of justice and also balance the equities. However, the Court holds and declares that the petitioner would, in law, be deemed to be senior to the respondent no. 6. Further, in view of the categorical stand taken by the State authorities that the petitioner shall be made Incharge Principal of the college with effect from 01.01.2019, let the same be done.

(Ahsanuddin Amanullah, J)

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