

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6196 of 2019

Bal Krishna Singh Son of Rameshray Saingh Resident of Village- Khamhar, P.S.- Muffasil (Begusarai), District- Begusarai, at present working on the post of cleaner in the college namely Akhil Bhartiya Sanskrit Hindi Vidyapith Sanskrit College Khamhar, Begusarai, Constituent Unit of Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resource Development Department, Government of Bihar, Patna.
2. The Director Higher Education Department Govt. of Bihar, Patna
3. The Deputy Director Higher Education Department Govt. of Bihar, Patna cum Public Information Officer
4. The Kameshwar Singh Darbhanga Sanskrit University, Darbhanga through its Registrar
5. The Vice-Chancellor of Kameshwar Singh Darbhanga Sanskrit University, Darbhanga
6. The Pro-Vice Chancellor cum Chairman of Public Complain Cell, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga
7. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga
8. The Nodel Officer namely Dr. Mamta Pandey, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga
9. The Principal of Akhil Bhartiya Sanskrit Hindi Vidyapith Sanskrit College, Khamhar (Begusarai).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar Jha, Advocate
For the Respondent/s	:	Mr. Hitesh Suman, AC to SC-13
For the University	:	Mr. Binodanand Mishra, Adv.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

4 27-08-2019 Heard learned counsel for the petitioner and the counsel appearing on behalf of the State as well as University.

Petitioner has filed the present writ application for a direction to the respondents to regularize the service of the petitioner on the post of Cleaner in Akhil Bhartiya Sanskrit Hindi Vidyapith Sanskrit College, Khamhar, Begusarai.



Learned counsel for the petitioner submits that the petitioner was appointed as Cleaner by the governing body of the College dated 01.04.1979. The petitioner submitted joining in the college and after the appointment of the petitioner as cleaner, the college was made consistent unit of the University on 06.04.1982.

Learned counsel appearing on behalf of petitioner submits that after the college was made constituent the respondents were under obligation to take over the service of the petitioner in terms of Section 4(1)(14) of the Bihar State Universities Act. He submits that similarly circumstanced other appointed alongwith petitioner, their case was considered by the respondents and they have been granted the benefits of regularization but the petitioner has been left out. He further submits with reference to Annexure-4 that the Registrar of the University has acknowledged the fact that the petitioner was working as employee of the college, Annexure-5 dated 23.05.1990 is another order issued under the order of the Vice Chancellor is acknowledgment of the fact that University has decided to grant ad hoc payment to the petitioner as non-teaching employee. On 23.10.1992 the University called for details from the college in question with regard to absorption of the non-teaching employee in the college in question and the



Principal of the College furnished the details for appropriate decision in the matter of absorption.

Learned counsel appearing on behalf of respondents submits that there is no denial of the fact that the petitioner was appointed in the college in question as cleaner before the college was made constituent unit of the University. He also admits that the University has forwarded the case of the petitioner for appropriate decision in the matter of absorption of the service way back in 1996 but no final decision was taken by the State Government. From Annexure-10 it appears that the petitioner was also asked to discharge the responsibility. It appears that issue of absorption of non-teaching employee was considered by Division Bench in C.W.J.C. No. 9221 of 1991 and the Division Bench relaying upon the judgment in Braj Kishore Singh's case 1997(1) PLJR 509 considered the interplay of Section 35 of the Bihar State Universities Act and approved the appointment against deemed sanction/staffing pattern. Following the judgment of the Division Bench large number of staff were considered for absorption and they have been granted the benefit of absorption. Unfortunately, the case of the petitioner was not considered in the light of the pronouncement of the Division Bench contained in Annexure-11 which was for all non-teaching employee following in the category of staffing



pattern. The post of cleaner falls in the category of staffing pattern.

The similar issue came for consideration before this Court in C.W.J.C. No. 20790 of 2014. This Court on consideration of the judgment of Full Bench reported in 1997(1) P.L.J.R. 509 and also the judgment of Apex Court in the case of Amar Kant Rai Vs. State of Bihar and others reported in (2015) 8 SCC 265 disposed of the writ application with the direction to the respondents to take appropriate fresh decision within a period of four months from the date of receipt/production of copy of this order. In order to maintain uniformity and consistently, the Court is obliged to follow the decision rendered in C.W.J.C. No. 20790 of 2014.

Accordingly, the writ application is disposed of in terms of the order dated 29.10.2018 passed in C.W.J.C. No. 20790 of 2014. The respondents are required to examine the claim of the petitioner in the light of their decision contained in Annexure-10 which was issued by the State Government in the light of the Full Bench judgment in the case of Braj Kishore Singh Vs. State of Bihar reported in 1997(1) BLJR 652: 1997(1) P.L.J.R. 509 and the judgment of the Apex Court reported in (2015) 8 SCC 265 where is the Apex Court has considered the issue of regularization of Night Guard. The respondents are



hereby directed to take appropriate decision in the light of the judgment of the Apex Court in Amarkant Rai Vs. State of Bihar & Ors. In Civil Appeal No. 2835 of 2015 (arising out of SLP (Civil) No. 20169 of 2013) reported in (2015) 8 SCC 265 at the earliest preferably within a period of four months from the date of receipt/production of a copy of this order.

The objection as to application of Section 35 clauses (1) and (2) is non est as at the time of appointment of the petitioner, the amended provision which is highlighted in the counter affidavit was not available as the amendment was introduced in the year 1993 and shall have no retrospective effect. Moreover, the Full Bench in Braj Kishore Singh's case has red down section 35 of the Bihar State Universities Act, 1976.

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

(Anil Kumar Upadhyay, J)

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