

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8848 of 2019

1. Laleshwar Sah Son of Mohan Sah, Resident of Village- Jibachhpur Ward No. 6, Police Station- Bharahi, District- Madhepura.
2. Sadanand Yadav Son of Late Upendra Narayan Yadav, Resident of Village- Tulsibari, Ward No. 7, Police Station and District- Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Higher Education Department, Govt. of Bihar, Patna.
4. The B.N. Mandal University through its Registrar, Lalu Nagar, Madhepura.
5. The Vice Chancellor, B.N. Mandal University through its Registrar, Lalu Nagar, Madhepura.
6. The Registrar, B.N. Mandal University through its Registrar, Lalu Nagar, Madhepura.
7. The Examination Controller, B.N. Mandal University through its Registrar, Lalu Nagar, Madhepura.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Prabhakar Singh, Adv.
For the Respondent State :		Mr.Arvind Kumar Singh, AC to GP 20
For B.N.Mandal University:		Mr. Shashi Bhushan Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 24-04-2019

The present writ petition has been filed by the petitioners for quashing the order dated 14.12.2018 issued by the Registrar, B.N.Mandal University i.e. the respondent no.6 whereby and whereby the claim of the petitioners for absorption/regularization has been rejected.

2. The brief facts of the case are that the petitioners are said to have been appointed on temporary basis/ daily wages/



muster roll basis in the Examination Department by the letter of the respondent no.6 dated 4.8.1992.

3. It is the case of the petitioners that the petitioners have also been paid some money in the year 1996 and they had continued to work in the Examination Department of the respondent University till the year 1998. It is the further case of the petitioners that in the year 2009, the University had published an advertisement for making appointment on post of Class-3 and 4, pursuant thereof the petitioners had applied, however, they were not appointed. It is further submitted that the respondent University has appointed several persons, however, the case of the petitioners for appointment on permanent basis has been ignored, hence, the petitioners had approached this Court by filing a writ petition bearing CWJC No. 11759 of 2018 and this Court had granted liberty to them to approach the respondent-authorities by filing appropriate representation before the respondent no.6 and the respondent no.6 was directed to pass appropriate order, pursuant whereof the impugned order dated 14.12.2018 has been passed.

4. At this stage it would be relevant to reproduce herein below the relevant portion of the impugned order dated 14.12.2018 passed by the respondent no.6 herein below:-



“ After hearing Sri Laleshwar Sah and Sri Sadanand Yadav and with reference to the relevant papers on the subject, the following reasoned order is being issued:-

01. As per the facts provided from the Examination Department and Establishment Section regarding the applicants Sri Laleshwar Sah and Sri Sadanand Yadav, both the persons have not been appointed in the University Headquarters.

02. Both the petitioners have not been getting salary and other payment from the University.

03. There is no appointment letter, proceeding, attendance register, etc. in the office records regarding both the petitioners in the University office. All the photo copies papers in his writ petition is out of office records.

04. This matter is out of law as well as rule and regulation with regard to appointment procedure.

In above circumstances and in the light of the Hon'ble High Court judgment fsyrf 11.09.2018 in C.W.J.C. No. 11759 of 2018, the claim of the petitioners is rejected and dismissed.”

5. Per contra, the learned counsel for the respondent University has submitted that it would be apparent from the impugned order dated 14.12.2018 that in the office of the



respondent University, no records are available regarding the petitioners having worked and the documents produced by the petitioners in the writ petition are not part of the office records of the University. It is further submitted that the petitioners do not have any case for regularization inasmuch as they had been appointed on temporary basis/ daily wage basis way back in the year 1992. However, there is no record to show that they had continued in their service, thereafter. It is further submitted that there is no averment in the writ petition to show that even temporary appointment of the petitioners were made in a valid manner i.e. after proper advertisement, conduct of the selection process etc., hence, the services of the petitioners cannot be considered for regularization in view of the judgment rendered by a Constitution Bench of the Hon'ble Apex Court, reported in (2006) 4 SCC 1 (**Secretary, State of Karnataka vs. Uma Devi & Ors.**).

6. At this stage, the learned counsel for the petitioners in reply has submitted that the facts stated in the impugned order dated 14.12.2018 are not correct and the petitioners have proof to show that they had worked continuously in the office of the respondent University.

7. I have heard the learned counsel for the parties and perused the materials on record and this Court finds that apart



from the issue of the case of the petitioners being not a fit case for regularization in light of the judgment rendered by the Hon'ble Apex Court in the case of **Uma Devi** (supra), the present writ petition itself involves disputed question of facts, as is apparent from the submissions made by the learned counsel for the parties as also from the records of the case, hence, such matter cannot be decided in a summary proceeding based on the pleadings of the parties and such disputed matters must be decided by the civil courts, after recording of due evidence in the matter. The extraordinary power of this Court under Article 226 of the Constitution of India is to correct the defects of law and not to declare the rights and title. Reference in this connection be had to a judgment of the Hon'ble Apex Court reported in (2019) 2 SCC 499 (**Sanjay Kumar Jha Vs. Prakash Chandra Chaudhary & Ors.**), as also the one reported in (2014) 14 SCC 102 (**Sri Ram Builder Vs. State of Madhya Pradesh & Ors.**), relevant paragraph whereof is paragraph no. 67 and lastly the one reported in (2004) 3 SCC 553 (**ABL International Ltd. & Anr. Vs. Export Credit Guarantee Corporation of India Ltd. & Ors.**).

8. Having regard to the facts and circumstances of the case and in view of the fact that the present writ petition involves serious disputed question of facts, which requires adducing of



evidence, this Court is not entitled to entertain the present writ petition under Article 226 of the Constitution of India, hence, the writ petition is dismissed, however, with liberty to the petitioners to invoke such other remedies as are available to them under the law.

(Mohit Kumar Shah, J)

Tiwary/-

AFR	AFR
CAV DATE	N/A
Uploading Date	30-05-2019
Transmission Date	N/A

