

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12318 of 2013

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Sandhya Mandal daughter of Late Abhay Charan Mandal Resident Of
Village- Keshopur, P.S.- Jamalpur, District- Munger

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Higher Education, Human Resources Department,
Government Of Bihar, Patna
3. Tilka Manjhi University, Bhagalpur through its Vice Chancellor, P.S.- Tilka
Manjhi, District- Bhagalpur
4. The Vice Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur P.S.-
Tilka Manjhi, District- Bhagalpur
5. The Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur, P.S.- Tilka
Manjhi, District- Bhagalpur
6. The Principal, Balmiki Rajniti Mahila College, Munger, P.S.- Munger,
District- Munger

... .. Respondent/s

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with

with

Civil Writ Jurisdiction Case No. 4728 of 2013

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Satyendra Prasad Singh S/O Late Kishori Prasad Singh Resident of C/O
Pradeep General Store, Thana Road, Chaudhary Tola, Ward No. 12,
Kahalgaon, P.S. Kahalgaon, District Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Higher Education, Government Of Bihar, Patna.
3. The Tilka Manjhi Bhagalpur University, Bhagalpur Through Its Registrar.
4. The Vice Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur.
5. The Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur.
6. The Deputy Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur.
7. The Finance Officer, Tilka Manjhi Bhagalpur University, Bhagalpur.

... .. Respondent/s



Civil Writ Jurisdiction Case No. 6152 of 2013

1. (i) Pushpalata Tiwari Wife of late Naresh Prasad Tiwary
(ii) Ved Divya Prakash Tiwari, S/o Late Naresh Prasad Tiwary,
(iii) Raj Tiwari, S/o Late Naresh Prasad Tiwary
(iv) Prem Prakash Tiwari, S/o Late Naresh Prasad Tiwary
All are R/o Sikargarh Tola, W.No. 07, P.O.+P.S. Kahalgam, District
Bhagalpur
(v) Sarita Tiwari, D/o Late Naresh Pd. Tiwary, W/o Sri Santosh Tiwari, R/o
Mridhachak, T.Kluganj, P.S.Kahalgaon, District Bhagalpur

... .. Petitioner/s

Versus

1. The T.m. Bhagalpur University and Ors.
2. The Vice-Chancellor, T.M. Bhagalpur University, Bhagalpur
3. The Pro Vice-Chancellor, T.M. Bhagalpur University, Bhagalpur
4. The Registrar, T.M. Bhagalpur University, Bhagalpur
5. The Finance Officer, T.M. Bhagalpur University, Bhagalpur
6. The Head, University Department Of Hindi, T.M.B.U. Bhagalpur
7. The State Of Bihar, Through The Principal Secretary, Department of
Education, Government Of Bihar, New Secretariat, Patna
8. The Director, Department of Higher Education, Government of Bihar, New
Secretariat, Patna
9. The State Govt. Auditor, deployed At T.M. Bhagalpur University, Bhagalpur

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 12318 of 2013)

For the Petitioner/s : Mr.Ravindra Kr Sinha No.2, Advocate
For the State : Mr.Anjani Kumar, AAG II
For the University : Mr. R.K.Giri, Advocate
Mr. Shivendra Shankar, Advocate

(In Civil Writ Jurisdiction Case No. 6152 of 2013)

For the Petitioner/s : Mr.Purushottam Kumar Jha, Advocate
For the State : Mr. Kumar Manglam, AC to SC 24
For the University : Mr. Shivendra Shankar, Advocate

(In Civil Writ Jurisdiction Case No. 4728 of 2013)

For the Petitioner/s : M/s Dharendra Nath Jha and
Chandra Shekhar Sharma, Advocates
For the State : AC to AAG 15
For the University : Mr. Shivendra Shankar, Advocate



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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

CAV JUDGMENT

Date : 03-07-2019

1. In all the above three writ petitions, similar question of law is involved and, accordingly, the above stated writ petitions were heard together and common judgment is being passed.

2. First of all, I would like to state briefly the facts of each cases separately.

Re. C.W.J.C. No. 12318 of 2013

3. In the above stated writ petition, petitioner Sandhya Mandal was, initially, appointed on daily wages basis on the post of Assistant to meet the exigency of work in Balmiki Rajniti Mahila College, Munger (hereinafter referred to as ‘the BRM College’). Subsequently, the Selection Committee consisting six persons in its meeting dated 27.2.1981 decided to absorb the services of the petitioner on sanctioned post, i.e., Lower Division Clerk w.e.f. 1.3.1981 in the pay scale prescribed by the Tilika Manjhi University, Bhagalpur (hereinafter referred to as “the University) and, thereafter, in pursuant to the decision of the Selection Committee, Principal of the College issued appointment letter to the petitioner and having got the appointment letter, she joined on the sanctioned post of Lower Division Clerk on



1.3.1981. She rendered her services regularly and continuously and from time to time her fixation of pay scale was fixed and approved by the concerned University. She received her salary from the date of her joining till August 1999 but from September, 1999 her salary was stopped, though she was continuously performing her duty. However, the Deputy Registrar of the concerned University *vide* letter No. 304 dated 20.12.1999 sought an information from the Principal of the College regarding sanctioned post and the name of persons who were working on that sanctioned post. In compliance of information sought by Deputy Registrar of concerned University, the Principal of the College sent his report *vide* letter No. BRM/99 dated 21.12.1999 disclosing this fact that the petitioner was appointed on 1.3.1981 by the College and her appointment was approved by the Bhagalpur University. Thereafter, the then Vice Chancellor of the concerned University on the instruction of the Government referred the matter to the Post Verification Committee for an inquiry with regard to appointment made in different colleges in concerned University including Balmiki Rajniti Mahila College, Munger. The Verification Committee in its report mentioned that Balmiki Rajniti Mahila College, Munger is a constituent unit and there were 11 sanctioned post of third category employees since



1976-77. Having received the post-wise verification, the Registrar of the concerned University *vide* letter No. 3/806 dated 2.5.2000 made a request to the Secretary, Higher Education Department, Government of Bihar, Patna, for necessary direction / order for payment of salary of the employees of the Balmiki Rajniti Mahila College, Munger, whose salary was held since 1.9.1999. Furthermore, the Post Verification Committee found that the appointment of petitioner was made on sanctioned post. Petitioner as well as other employees of the College made several representations before the concerned authorities for payment of their salary but no step was taken and, thereafter, petitioner filed C.W.J.C. No. 1343 of 2001 before the High Court for payment of her monthly salary, which was disposed of on 18.4.2006 with certain directions. The certified copy of order dated 18.4.2006 passed in C.W.J.C. No. 1343 of 2001 has been annexed with writ petition as Annexure 6. However, in the meantime, the Registrar of the University on the approval of State Government, *vide* its Office Order No. 88 dated 27.5.2006 absorbed the services of the petitioner and other employees of the University in regular establishment w.e.f. 5.6.2003 and after absorption, the salary of the petitioner had been regularly paid till the date of her superannuation i.e., 31.8.2010. The petitioner was regularly



discharging her duties since 1.9.1999 till 31.8.2010 but her salary was not paid to her from 1.9.1999 to 4.6.2003 and, thereafter, she again moved before High Court *vide* C.W.J.C. No. 5616 of 2010 for payment of her salary from 1.9.1999 to 4.6.2003 but the aforesaid C.W.J.C. No. 5616 of 2010 dismissed by the High Court *vide* order dated 26.4.2013. The certified copy of the order dated 26.4.2013 passed in C.W.J.C. No. 5616 of 2010 has been annexed with writ petition as Annexure 8.

4. Furthermore, the case of petitioner is that after her retirement, her retirement benefit was not given to her on the ground that she had not completed 10 years qualifying service for pension.

5. On the basis of aforesaid pleadings, petitioner prayed for issuance of writ of mandamus commanding the respondents to pay the retiral benefits, i.e., pension, gratuity, leave salary, provident fund etc. to the petitioner after adding or calculating the period of her services from 1.3.1981 to 4.6.2003 and also for directing the concerned authorities to pay 18% interest on the amount of retiral benefits of the petitioner.

6. Counter affidavit has been filed on behalf of respondent Nos. 3 to 5 stating therein that petitioner was, initially, appointed against unsanctioned post and while she was in service,



a letter was received in the concerned University from Raj Bhawan bearing No. 208/GS dated 3.7.1999 and in the light of the aforesaid letter, the University stopped taking the services from those employees, who were working against unsanctioned post. As a result whereof, the payment of salary of those employees including petitioner was stopped. However, the affected employees moved the High Court and the concerned University prepared a roster in the light of the Court's judgment and sent to the Government for needful. The Government *vide* letter No. 1/va 3-212/06 H.Ed.-681 dated 11.5.2006 approved the roster and services of all the employees including petitioner were absorbed w.e.f. from 5.6.2003. Since the appointment of the petitioner prior to 5.6.2003 was not valid because there was neither any sanctioned post nor the appointment had any legal or statutory validity, her service prior to 5.6.2003 was not valid and since she superannuated from service on 31.8.2010 and has not completed 10 years continuous service for getting pensionary benefit, she was not found to be entitled to get pensionary benefit as her service period was less than ten years.

7. Separate counter affidavit has been filed on behalf of Respondent Nos. 1 and 2 stating therein that after open advertisement, the University had made a panel of Class III and



Class IV posts wherein the name of petitioner and others were included but on account of illegal procedure adopted by the concerned authorities of the University, the same was objected by the State Government and, thereafter, the matter travelled up to the High Court and High Court issued certain directions and in the light of the aforesaid direction, again a fresh list was drawn up but there was certain anomaly in the redrawn list and, therefore, the matter again travelled up to the Chancellor, because the State Government was not prepared to give approval to the entire list of daily wages employees on account of limited sanctioned number of posts for which it was only liable to release of fund for payment of their salary. However, the University again prepared a fresh list and services of the petitioner and others were regularized *vide* order dated 27.5.2006, which was made effective from 5.6.2003. It has further been averred that the petitioner had filed C.W.J.C. No. 5616 of 2010 before High Court for grant of her salary for the period from 1.9.1999 to 4.6.2003 but High Court *vide* order dated 26.4.2013 rejected the claim of petitioner observing that no obligation was created either upon the State or the University prior to 5.6.2003 and if petitioner thinks fit, she may claim her salary for the aforesaid period from the concerned College and, furthermore, the High Court observed that no relief of shifting the date of



regularization or any other consequential benefit can accrue to the petitioner. It has further been averred that the issue raised in the present writ petition has already been adjudicated by High Court in C.W.J.C. No. 5616 of 2010 and, as such, the present petition for the same relief is not maintainable.

8. Again a separate counter affidavit has been filed on behalf of Respondent Nos. 3 to 5 stating therein that the University is not responsible for considering the services rendered by the petitioner for the period running from September 1999 to 4.6.2003 as the University had already issued letter to all the Principals of concerned Colleges not to take any work from the persons appointed by the concerned Colleges.

9. It is admitted position that the Balmiki Rajniti Mahila College, Munger, was initially an affiliated college under Tilka Manjhi University, Bhagalpur and, subsequently, the said college became a constituent college. The aforesaid fact has not been disputed either by the University or by the State.

Re. C.W.J.C. No. 4728 of 2013

10. The petitioner in the above stated writ petition was, initially, appointed on the post of Orderly in Shabnkar Sah Vikramshila Mahavidyalay (hereinafter referred to as “ the S.S.V. College”) on 10.11.1979 and the letter of appointment was issued



by the Secretary, Governing Body of the said college. In pursuance to appointment letter petitioner joined his service on 10.3.1980 in S.S.V College, Kahalgaon. However, subsequently, he was transferred from S.S.V. College, Kahalgaon to J.M.S. College, Munger, by Office Order No. 195/2003 dated 9.7.2002 and, thereafter, gave his joining in J.M.S. College, Munger on 14.7.2003 but he was again transferred from J.M.S. College, Munger, to S.S.V. College, Kahalgaon and joined at S.S.V. College, Kahalgaon on 3.12.2004. Petitioner retired from his service on 31.12.2009 from the post of Laboratory Peon. After retirement, he made several representations before the concerned authorities for fixation of pension and payment of gratuity etc. but no step was taken and, thereafter, he preferred the present writ petition. The petitioner has prayed for issuance of writ of mandamus commanding and directing the respondents to pay the gratuity amount and fixed the pension amount and pay accordingly and further for issuance of direction to concerned authorities to pay statutory interest.

11. The respondent Nos. 1 and 2 filed their counter affidavit stating therein that the State regularly releasing the amount for payment of salary and retiral benefit of employees of Universities and it is upon the concerned Universities to disburse



the amount sanctioned for payment of salary and retiral benefits of employees of the University.

12. The concerned University has filed separate counter affidavit stating therein that the services of petitioner was absorbed in regular pay scale w.e.f. 5.6.2003 and he retired on 31.12.2009 from the post of Laboratory Peon. Since the qualifying service of the petitioner is less than 10 years, he is not entitled to get pension and so far as the payment of gratuity is concerned, the same has already been paid to the petitioner *vide* cheque No. 639676 dated 12.8.2011. It has also been averred that no doubt, one Bishundeo Paswan retired as Orderly from S.S.V.College, Kahalgaon is getting his pension but when the aforesaid fact came to the notice of the concerned authorities, the process for stopping the payment of pension of Sri Bishundeon Paswan has been initiated.

Re. C.W.J.C. No. 6152 of 2013

13. Originally, above stated writ petition was filed by original petitioner, namely, Naresh Prasad Tiwary, who died during pendency of the above stated writ petition and *vide* order dated 17.1.2018 his legal heirs were substituted in his place.

14. The original petitioner Naresh Prasad Tiwary was appointed as daily wages class III employee in Hindi



Department of University, on 30.1.1985 by respondent No. 6, who was Head of Department of Hindi of the University. The appointment of the original petitioner was duly approved by the Vice Chancellor of the University and his appointment was extended and approved from time to time by the University. The petitioner discharged his duties regularly without any interruption since the date of his appointment till his retirement, i.e., till 31.7.2012 and, accordingly, he rendered his services from 31.1.1985 to 31.7.2012. It is further averred in the writ petition that in the case of **Nikhil Kumar Jha and others Vrs. State of Bihar & Ors. (CWJC No. 11854/1999 and another analogous cases)**, the matter of regularization of services of petitioner and other similarly situated persons was taken up and pursuant to the order passed in the above stated cases, the University issued an advertisement on 18.10.2001 inviting applications from daily wages class III and Class IV employees for their absorption/regularization in the regular services of the concerned University. The petitioner applied in response to the above stated advertisement and participated in the process of selection. The petitioner declared successful in the said process of selection and, thereafter, University issued order on 5.7.2002 in respect of regularization of services of the petitioner and others and,



thereafter, petitioner gave his joining but due to certain errors in order dated 5.7.2002, the matter travelled up to the Court of Chancellor and, lastly, *vide* office orders No. 84/06, 85/06, 86/06, 87/06 and 88/06 all dated 27.5.2006, the services of petitioner and several other persons were finally regularized w.e.f. 5.6.2003. It has further been averred that the services of 14 Class III employees of T.N.B.College, Bhagalpur, were also finally regularized and they were absorbed in the services of the University w.e.f. 5.6.2003 by the same process like the absorption of the petitioner but University *vide* Office Order No. 58/07 dated 8.3.2007 had been pleased to shift back the effective dates of absorption of the said 14 employees of T.N.B.College, Bhagalpur from 5.6.2003 to the date of their respective initial appointment in the said T.N.B.College, Bhagalpur and, thereafter, all the aforesaid 14 employees of T.N.B.College, Bhagalpur, were paid all consequential monetary benefits on account of shifting back the effective dates of their respective absorption, which is evident from perusal of Annexure 4/1 of the writ petition. However, when petitioner and others were not treated at par with above stated 14 employees of T.N.B.College, Bhagalpur, petitioner and others filed writ petition bearing CWJC No. 181/2013 before the High Court but, subsequently, petitioner filed a petition in the aforesaid case



for deletion of his name from the array of petitioners in CWJC No. 181/2013. It has further been averred that the absorption of the petitioner was made in view of the law laid down by the Full Bench of this Court vide order dated 19.2.1997 passed in L.P.A. No. 36 of 1994 (Braj Kishore Singh Vs. the State of Bihar & Ors.) reported in 1997(1) PLJR 509. It has further been averred that in the light of order dated 28.3.2011 passed by the High Court in CWJC No. 2173/2008, the services of ten Class III and Class IV daily wage employees of J.P.College, Narayanpur was regularized from the date of their respective initial appointments. It has further been averred that the petitioner was, initially, appointed by competent authority against the post falling within the purview of Staffing Pattern and his service came to be absorbed applying the principle laid down by the High Court in the case of **Braj Kishor Singh (supra)** and, therefore, the services rendered by the petitioner before the effective date of regularization is required to be taken into account, at least, for the purposes of calculating qualifying service for grant of petitioner's pensionary benefit. The petitioner has referred several instances in which the University as well as other Universities granted salary and pensionary benefits shifting the date of regularization but the petitioner was not given his retiral dues on the ground that he had not completed ten years



service, which is mandatory for qualifying service. Accordingly, the original petitioner prayed for issuance of direction to concerned authorities to make calculation of original petitioner's post retirement claim after taking into account petitioner's temporary service from 31.1.1985 to 5.6.2003 and also to make payment of penal interest @ 12 % per annum in addition of payment of statutory interest @ 5% per annum to the petitioner.

15. The respondent Nos. 1 to 5 filed counter affidavit stating therein that the services of original petitioner was regularized w.e.f. 5.6.2003 and he retired on 31.7.2012 and, therefore, it is obvious that original petitioner has qualified regular service for the period of 9 years 10 months 26 day, less than ten years and, therefore, the original petitioner was not entitled for payment as per rules. Furthermore, it has been averred that Respondent No. 6 was not competent to appoint any Class III and Class IV employees and it was only Vice Chancellor, who had authority to appoint Class III and Class IV employees against vacant sanctioned post under the statutory provisions and mere approval of the Vice Chancellor of daily wages appointment cannot be treated as legal appointment of regular nature and, therefore, the period of daily wages from 13.1.1985 to 4.6.2003 cannot be counted for retirement benefits in accordance with law.



It has further been averred that the case of 14 Class III employees of T.N.B. College, Bhagalpur, is not similar to the case of petitioner as the aforesaid 14 Class III employees of T.N.B. College, Bhagalpur, were granted pay scales w.e.f. 1.1.1987 as per approval of Vice Chancellor and, consequently, Provident Fund, gratuity, insurance etc. were deducted out of their salary, whereas petitioner was granted wages per months as per the order of University.

16. Learned counsels appearing for petitioners would submit that, admittedly, the services of petitioners were regularized in the year 2006 w.e.f. 5.6.2003. They would, further, submit that it is an admitted position that the petitioners were appointed by competent authority and they discharged their official duties till the date of their superannuation without any interruption. They would submit that the case of the petitioners is fully covered by the judgment of **Jawal Prasad Singh versus The T.M. Bhagalpur University and others** delivered on 29.2.2016 in **Letters Patent Appeal No. 1844 of 2012** by Division Bench of this Court. They would, further, submit that almost similar question was involved in the case of **Rajendra Kamti and others Versus Lalit Narain Mishra University and others** reported in **2006(3) PLJR 83** and a Single Judge of this court while rendering



the judgment in the aforesaid case, clearly, held that the petitioners of the aforesaid case were entitled to adding their period of service as daily wages to continuous service in regular establishment for pensionary benefits. It is, further, submitted that petitioner in CWJC No. 12318 of 2013 was appointed by competent authority on sanctioned post and she did her work till her retirement without any interruption and, therefore, even her service was regularized w.e.f. 5.6.2003, then also, the period spent by her in service prior to 5.6.2003 should be counted for granting retiral benefit to her. It is, further, submitted that so far as the remaining petitioners are concerned, their cases are fully covered by the judgment rendered by Full Bench of this Court in **Braj Kishore Singh and others Versus The State of Bihar and Ors. reported in 1997(1) PLJR 509** which was followed by Division Bench of this Court in **Braj Kishore and Others versus The State of Bihar and others reported in 2004(3) PLJR 668**. They would further submit that in view of the law laid down in the above stated judgments, the services rendered even on unsanctioned post should be counted on the principle of Staffing Pattern because it has, clearly, been held in the above stated judgment of **Braj Kishore Singh and others Versus The State of Bihar and ors. reported in 1997(1) PLJR 509** that the once posts are available, it should be open to the



competent authority to make the appointments against such post and that would be deemed to be appointments according to Staffing Pattern and, furthermore, they cannot be said to be illegal for want of post.

17. They would, further, submit that in similar situated facts, several persons were granted the benefit of retiral benefits and the case of these petitioners stands on similar footing to that of cases in which in similar situated circumstances, several persons are getting retiral benefits. To fortify the contention, my attention has been drawn towards the judgment delivered by Division Bench of this Court on 29.2.2016 in **Jwala Prasad Singh Case (Supra)**.

18. On the other hand, learned counsel appearing for University refuted the above stated submissions arguing that, admittedly, the services of petitioners were regularized w.e.f. 5.6.2003 and they accepted the above stated date of regularization of their services and, therefore, now, they have no right to challenge the above stated date of regularization of their services.

19. Learned counsel of the University referred the judgment of **Ranjan Kumar Singh and others Versus The State of Bihar and others** rendered by Division Bench of this Court on 19.2.2018 in L.P.A. No. 1464 of 2013 and submitted that in the



aforesaid judgment, the Division Bench of this Court refused to shift back the date of regularization of services of the petitioners of the above stated case. He, further, submitted that the case of petitioners are fully covered by the judgment of **Ranjan Kumar Singh and Ors (supra)**.

20. After perusing the pleadings as well as after hearing the parties, I find that in all the above stated writ petitions, the only question arises for determination as to services rendered by the petitioners prior to their absorption / regularization of service can be counted for grant of retiral benefits or not.

21. Admittedly, petitioner in CWJC No. 12318/2013 was appointed on sanctioned post of Assistant and she joined her service on 1.3.1981. Furthermore, she got her salary till August 1999 and her salary was stopped from September, 1999 but she did her work even after August, 1999 in the concerned college. It is also an admitted position that in B.R.M.College, Munger, three sanctioned posts of Assistant was available in the year 1976-77 and the appointment of the above stated petitioner was made by Selection Committee consisting six persons on the sanctioned post of the Assistant. Furthermore, it is an admitted position that pay scale of the above stated petitioner was revised time to time. Furthermore, it is also an admitted position that on the direction of



State Government, the Vice Chancellor of University referred the matter to the Post Verification Committee for an inquiry with regard to the appointment made in different colleges under University including B.R.M. College, Munger, and the aforesaid Post Verification Committee found that the B.R.M. College, Munger, was constituent Unit and there were eleven sanctioned posts of third categories employees since 1976-77. Annexure 4 of CWJC No. 2318/2013 goes to show that the above stated Post verification Committee mentioned the aforesaid sanctioned post of above stated College on the basis of financial budget of 1976-77 of the said college and the Vice Chancellor found that the appointment of above stated petitioner was valid and she was regularly working on her post since the date of her joining. No doubt, earlier above stated petitioner filed CWJC No. 5616/2010 before the High Court for grant of her salary from September, 1996 to 5.6.2003 and a Co-ordinate Bench of this Court refused to grant the above stated relief in favour of the above stated petitioner but, admittedly, the aforesaid CWJC No. 5616/2010 was in respect of shifting the date of regularization of service of the above stated petitioner but in the present case, the above stated petitioner has prayed for adding her period of service prior to 5.6.2003 for pensionary benefit.



22. 14 (1) of Section 11 of statutes for the grant of retirement benefits to employees of University describes the meaning of qualifying service and the aforesaid provision says that qualifying service means service rendered as a member of the staff of the University in a substantive capacity including periods spent on the probation. All services rendered in the University on a full time basis on a temporary or officiting capacity followed without interruption by substantive appointment in the same or any other post shall count as qualifying service except in respect of periods of service in “work charged establishment” and periods of service paid from “contingencies”.

23. In the present case, it is not the case of University that petitioners were working in work charged establishment or their payment was made from contingencies. It is the case of petitioner in CWJC No. 12318/2013 that she was appointed by competent authority on a sanctioned post and she continuously without any interruption discharged her official duties till the date of her superannuation though she did not get her salary from September, 1999 to 4.6.2003. Moreover, mere not getting salary does not amount to interruption in service, therefore, it is obvious that the concerned authorities committed error in not counting the services of the petitioner prior to 5.6.2003 for grant of pensionary



benefit to her and, in my opinion, the case of petitioner in CWJC No. 12318/2013 is fully covered by the decision rendered by a Coordinate Bench of this Court in **Rejendra Kamti and others (Supra)**.

24. Similarly, petitioner in CWJC No. 4728/2013 was appointed on the post of Orderly in S.S.V.College,Kahalgaon by the Governing Body of the concerned college and he joined his service on 10.3.1980. There is noting on the record to show that the services of the aforesaid petitioner was dis-continued and, admittedly, the above stated petitioner was retired on 31.12.2009. The stand of University is that the above stated petitioner was not appointed on a sanctioned post but even if it assumed that the appointment of aforesaid petitioner was not made on sanctioned post, then also, in the light of judgment of **Braj Kishore Singh and others (Supra)**, the post of the aforesaid petitioner shall deemed to be sanctioned on the principle of Staffing Pattern because, subsequently, the Government approved the Staffing Pattern, therefore, in my opinion, the service rendered by the aforesaid petitioner prior to 5.6.2003 should be counted for grant of retiral benefit to him.

25. In CWJC No. 6152 of 2013, it is admitted case of the original petitioner that he was appointed as the daily wage



Class III employees in the Department of Hindi of the University, by the Head of Department of Hindi University on 31.1.1985 and his appointment was duly approved by the Vice-Chancellor of the University. Furthermore, it is an admitted position that the appointment of original petitioner was extended and approved from time to time by the Vice-Chancellor of the University and he had been discharging his duty without any interruption till his retirement. Although, it has been pleaded and argued on behalf of the respondents that the appointment of original petitioner was not valid as Head of Hindi Department had no right to appoint the original petitioner and mere approval by the Vice-Chancellor of the University was not sufficient to treat the appointment of original petitioner as legal but I am unable to accept the aforesaid contention, because the approval of appointment of the original petitioner by the Vice-Chancellor of the University was sufficient to show that the Vice-Chancellor of the University gave his consent in respect of the appointment of the original petitioner. No doubt, there is nothing on record to show that the appointment of the original petitioner was made on sanctioned post but it has not been denied by the respondents that the case of original petitioner does not come under the ambit of staffing pattern. This Court has already highlighted the principle of staffing pattern in **Braj**



Kishore Singh and Others Versus State of Bihar and Ors.

reported in **1997(1) PLJR 509**. Therefore, even if the appointment of original petitioner was not made on sanctioned post, then also the original petitioner was entitled to get the benefit of staffing pattern because it has already been set at rest that once posts are available, the competent authority may make appointment against such posts and the said appointment would be deemed to be an appointment according to the staffing pattern. In the present case, it is not the case of respondents that at the time of appointment of original petitioner, no post was available in the concerned college and, therefore, in view of the law laid down in **Braj Kishore Singh and Ors. (Supra)**, in my view, the service rendered by original petitioner prior to 5.6.2003 should be counted for retiral benefit. Moreover, the case of petitioner is squarely covered by the decision rendered by a Co-ordinate Bench of this Court in the case of **Rajendra Kamti and others (Supra)**.

26. On the basis of aforesaid discussions, C.W.J.C. No. 12318/2013, C.W.J.C. No. 4728/2013 and C.W.J.C. No. 6152 of 2013 are allowed and, accordingly, the respondents, particularly, the concerned University, i.e., Tilika Manjhi University, Bhagalpur, the Vice Chancellor, Tilika Manjhi University, Bhagalpur and the Registrar, Tilika Manjhi University, Bhagalpur



are directed to ensure payment of retiral dues of the petitioners of above stated writ petitions within three months from the date of receipt / production of a copy of this order and shall also pay 9% simple interest on the retiral dues of the above stated writ petitioners.

27. It is made clear that the findings / observations given in this order has been passed only in respect of retiral dues of the petitioners and the findings / observations given in this order shall not shift the date of regularization of the petitioners.

(Hemant Kumar Srivastava, J)

Spd/-

AFR/NAFR	AFR
CAV DATE	27.02.2019
Uploading Date	04.07.2019
Transmission Date	04.07.2019

