

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.573 of 2018

In
Civil Writ Jurisdiction Case No.13830 of 2006

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Most. Sumitra Devi (deceased) wife of Late Ganga Yadav through legal heir
Kailash Yadav, Son of late Ganga Yadav, Resident of Village-Sahebganj Bind
Toli, P.O.-Champa Nagar, P.S. Nath Nagar, District-Bhagalpur.

... .. Appellant/s

Versus

1. The State of Bihar through the Secretary, Department of Higher Education,
Government of Bihar, Patna
2. The Vice Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur.
3. The Registrar, Tilka Manjhi Bhagalpur University Bhagalpur.
4. The Superintendent, Student Welfare, Tilkamanjhi Bhagalpur University
Hostel, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Shashi Bhushan Kumar, Advocate
For the State	:	Mr. Ashutosh Ranjan Pandey, AAG-15
For T.M.B.U.	:	Mr. Anand Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-07-2019

This appeal questions the judgment of the learned
Single Judge in C.W.J.C. No. 13830 of 2006 decided on 22nd
March, 2018, whereby the claim of the petitioner for release of
all terminal benefits together with interest and costs of the
litigation of late Ganga Prasad Yadav who is stated to have been
working and died in harness as a Class-IV employee on
04.11.2003 has been rejected.



2. The case has a chequered history with several rounds of litigation preceding that requires to be mentioned in the background in which the relief was prayed for before the learned Single Judge.

3. It is the contention on behalf of the appellant that late Ganga Yadav was engaged and was working as a Night Guard in the Tilka Manjhi Bhagalpur University whose services came to be absorbed under Office Order No. 41/84 dated 04.08.1984. A copy of the said order is Annexure-8 filed along with the reply to the counter affidavit of the University in the writ petition. Late Ganga Yadav is stated to have been receiving payments and continued to work as such. In order to support the continuance in services a transfer order dated 4th October, 2002 has been relied on which is Annexure-9 to the same affidavit. It is the consistent stand of the appellant that the services of Ganga Yadav were never disengaged nor his services were terminated and he continued to serve in the same capacity till he died in harness on 4th of November, 2003.

4. It appears that writ petitions had been filed before this Court by other employees as well seeking their absorption/regularization because of the fact that the Chancellor had issued directions on 3rd July, 1999 for disengaging all



unlawful and illegal appointments including daily wagers throughout the State of Bihar in various Universities. This letter to all the Vice Chancellors was received by the respondent-University as well and a copy of the same has been filed as Annexure-A to the counter affidavit of the State filed through the Under Secretary, Education Department, Government of Bihar. The University in its affidavit has also indicated that the letter was received for disengaging all such daily wagers and unlawful appointees who were not continuing on the basis of any valid appointment or sanctioned post. According to the University, payments were stopped in respect of all such employments and engagements who according to the appellant were on daily wages basis. Corrective measures according to the University were taken to dispense such services.

5. It is here that the appellant contends that the case of Ganga Yadav stands on a different footing, inasmuch as, he was never disengaged nor his services were terminated nor his salary stopped as a result whereof he did not fall in the category of any such employees who were disengaged pursuant to the directives issued by the Chancellor. It is the contention of the appellant that there is nothing on record to indicate that Ganga Yadav was ever disengaged or his salary was stopped.



6. It also transpires that about 71 petitioners joined together in three writ petitions that were filed before this Court being C.W.J.C. No. 12500 of 2000 (Parmanand Singh & Ors. Vs. The Tilkamanjhi Bhagalpur University & Ors.), C.W.J.C. No. 8376 of 2001 (Sahdeo Raut & Ors. Vs. Tilkamanjhi Bhagalpur University & Ors. and C.W.J.C. No. 7802 of 2002 (Jyotish Poddar & Ors. Vs. The Tilka Manjhi Bhagalpur University & Ors.).

7. These three writ petitions were entertained and during the hearing of the said writ petitions it was urged on behalf of the University that since there were no sanctioned posts, therefore, non-availability thereof resulted in non-payment of salary to the petitioners therein. It was also brought to the notice of the Court that prior to 1976 there were 134 sanctioned posts, but after the aforesaid issue of disengagement was raised, 43 posts were created and sanctioned. In order to accommodate the petitioners against the aforesaid 43 posts, a direction was issued on 7th of February, 2003 for an appropriate action to be taken in this regard. The said order dated 7th February, 2003 is extracted hereinunder:-

“These three writ petitions on behalf of 71 petitioners in all (one of whom namely Makhan Mandal died during the pendency of the



case) have been filed raising grievance about non-payment of salary to them. The petitioners claim to be working as class IV staff in different hostels of the Tilka Manjhi Bhagalpur University and its constituent colleges. It transpired that non-payment was on account of the non-availability of sanctioned posts against which the petitioners claimed to be working. The cases were heard on 26/27.2.2002 and fixed for orders on 5.3.2002. On 5.3.2002 further discussions took place and the delivery of the order was deferred to enable the Standing Counsel to take fresh instructions. As the ordersheet would reveal the hearing was deferred from time to time so that the government could take decision on the point of creation of posts. At a stage when it appeared that the State was not in a position to take a favourable decision, an interim order was passed on 27.9.2002. In the light of the said order the matter was considered afresh. Finally, on 31.1.2003 the government was pleased to create 43 posts of Ward Servants-cum-Darwan for the hostels of the respondent University and its constituent colleges.

It may be mentioned at this stage that there is dispute about the availability of sanctioned posts and the requirement of class IV staff in different hostels under the respondent-University. According to the petitioners 134 posts were already available prior to 1976. The



University had recommended creation of 248 posts, 104 for the UGC hostels and 144 for other non-UGC hostels. As against that, as mentioned above, only 43 posts have been sanctioned.

Counsel for the State stated that the recommendation of the University included posts of Mali, Safai Karamchari and Mess staff, apart from Ward Servants and Darwan but the government has acceded in the request for creation of posts of Ward Servants-cum-Darwan alone. It was stated that in the opinion of the State Government, services such as cleaning and gardening which are done by Safai Karamcharis and malis should be outsourced on contract basis to ensure quality of service in a cost effective manner, and so far as the Mess are concerned, they are traditionally managed by private contractors to provide food and other related services to the boarders and are paid directly by them.

In the facts and circumstances, the Court does not feel inclined to sit in appeal over the decision of the State Government not to provide posts for work relating to cleaning and gardening. Undisputedly hostel messes are run by private contractors, who employ their own staff. So far as the posts of Ward servants and Darwans are concerned, it appears that number of persons already working as such is more and, therefore, sanction of 43 posts is likely to create



a dispute inter se between them. The Court, however, cannot help it and it is not possible to meet the expectations of all who may be working. Only a direction can be issued to the University to fix norms consistent with Articles 14 & 16 of the Constitution of India and consider the cases for absorption, and pay them salary according to law. This should be done within two months of receipt of a copy of this order.

With the above observations and direction, the petitions are disposed of.”

8. Admittedly, Ganga Yadav, who was alive then was not a writ-petitioner in those writ petitions. It is quite possible that he may not have found it necessary to file a writ petition as he was already continuing in service and receiving salary. Ganga Yadav died on 4th of November, 2003.

9. It appears that another set of writ petitions were filed in relation to similar cases relating to J.P. University being C.W.J.C. No. 7187 of 2004 (Jamuna Prasad Singh Vs. J.P. University & Ors.) connected with other matters that came to be disposed of on 18th August, 2004. Along with the said bunch the appellant had also filed C.W.J.C. No. 9598 of 2004 that also came to be disposed of by a common order in respect of several organizations including the case of the appellant vide judgment



dated 18.08.2004. The said judgment is extracted hereinunder:-

“In all these writ petitions the grievance of the petitioners relates to retiral dues/death cum retiral dues, which have not been redressed even after filing of the writ petition.

However, having regard to the order dated 19.9.2003 disposing of several writ petitions bearing C.W.J.C. No. 7054 of 2003 and analogous cases by common order, this Court considers it expedient to dispose of these writ petitions also in terms of the directions given in the said order with only modification that two paragraphs affidavit personally sworn by the concerned authority must be filed by 29th September, 2004. Parties will be bound by the said direction and they should proceed in the matter accordingly.”

10. A contempt application was also filed by the applicant being M.J.C. No. 1486 of 2005 (Most. Sumitra Devi Vs. The State of Bihar & Ors.) which was withdrawn with liberty to raise the grievance before the appropriate forum. The order dated 19th October, 2005 is extracted hereinunder:-

“Heard learned counsel for the petitioner and Mr. Keshari, learned counsel



appearing for the University.

In this M.J.C. application, grievance of the petitioner who is a widow of Class IV employee of the University, is that she has been denied the benefit of pension, gratuity and leave encashment besides full amount of group insurance.

Learned counsel for the petitioner finding difficulty in maintaining the said claim in this M.J.C. application has rightly sought permission to withdraw this M.J.C. application with a liberty to raise it before the authority concerned or any other appropriate forum.

M.J.C. application is permitted to be withdrawn with a liberty aforementioned to the petitioner.”

11. The appellant appears to have approached the Vice Chancellor of the University thereafter along with a representation.

12. As noted above, 43 posts had been sanctioned and against the said sanctioned posts, the University notified the appointments of 43 persons vide Office Order No. 152/05 dated 20th August, 2005. The name of Ganga Yadav does not find place in the said list. The stand of the University is that since his name had not been recommended and since he was not a



petitioner in the writ petitions pursuant whereto the said adjustment had been made, therefore, his name was not considered.

13. This is how two writ petitions came to be filed in the year 2006 by the appellant being C.W.J.C. No. 13830 of 2006 for payment of terminal benefits of late Ganga Prasad and the second writ petition C.W.J.C. No. 13283 of 2006 praying for compassionate appointment for her son.

14. C.W.J.C. No. 13283 of 2006 was disposed of on 6th of May, 2010 with a direction to consider the claim of compassionate appointment which came to be rejected by the University on 3rd of August, 2011 and a copy of the said order has been filed as Annexure-B to the supplementary counter affidavit of the University dated 15.03.2018. The order dated 03.08.2011 is extracted hereinunder:-

“Sumitra Devi wife of Late Ganga Yadav has claimed for payment of post retiral benefit of her husband Ganga Yadav and appointment of her son on compassionate ground Late Ganga Yadav died on 04.11.2013. The Service of Late Ganga Yadav along with other IVth Grade employees of different hostels were absorbed vide office order No. 41/84 dated 4.8.84 in accordance with resolution no. 43



dated 19.07.81 by the order of the Vice Chancellor.

In different hostels of the University no posts for any of the category either for Class-III or Class IV was sanctioned. The office order no. 41 was issued without any sanction of post. In the year 1999 the Governor of Bihar took note that in the Universities of Bihar irregularities have been committed in the matter of appointment and promotion. The Universities of the State will issued directive vide letter no. 208/IS(1) dated 03.07.99 from Governor's Secretariat asking for corrective measure within stipulated time. Perusal to the directive employees of the hostels working against no post were disengaged and payment was stopped . being aggrieved they filed writ application in the Hon'ble High Court vide C.W.J.C. No. 12500/2000, 6376/2001, 8302/2001. In accordance with the direction of the Hon'ble High Court the State Govt. vide letter no. 14(71-221/01 HRD/74 dated 31.01.2003 sanctioned altogether 43 posts of IVth grade for different hostels within the University. On availability of posts the university constituted a committee for absorption of the series of the employees of hostels. On recommendation of the



committee 43 persons working on different IVth grade posts in hostels were absorbed in the University service rule office order no. 152/05 dated 20.8.2005 w.e.f. 31.04.2003 in which the name of late Ganga Yadav was not included Late Ganga Yadav was not a petitioner in any of the writ petition i.e C.W.J.C. No. 12500/2000, 6376/2001 and 8302/2001 and therefore this case was not considered by the Committee constituted for the purpose.

Hence Most. Sumitra Devi wife of late Ganga Yadav is not entitled to get death cum retiral benefits.

Since Late Ganga Yadav was not a regular employee duly absorbed on the sanctioned post the case of his son Sri Uday Kumar, petitioner no. 2 in C.W.J.C. No. 13280/2006 has no merit is being considered for appointment on any post on compassionate ground. His prayer for appointment on compassionate ground is therefore rejected.

The case of Sri Uday Kumar petitioner no. 2 of the writ application referred to above stands disposed of in terms of order dated 06.05.2010 of the Hon'ble High Court passed in C.W.J.C. No. 13280/2006.

Sd/-



Vice Chancellor
dated 03.08.2011”

15. The writ petition C.W.J.C. No. 13830 of 2006 giving rise to the present controversy, namely that related to terminal benefits remained pending. During the pendency of the writ petition two learned Single Judges of this Court after having noted the claim of the appellant passed the following orders on 12.02.2013 and 01.05.2013 :-

“Learned counsel for the petitioner, learned A.C. to G.P. 17 for the State and Mr. Anil Singh, learned counsel for the Tilka Manjhi Bhagalpur University, Bhagalpur are present.

The writ petition was filed seeking death-cum-retrial dues of late husband of the petitioner. However, in view of the counter and supplementary counter affidavits as well as the reply to the same, it appears that the controversy now revolves around as to whether the post occupied by the petitioner was a sanctioned post and further whether the requisition on the post as claimed by the petitioner can be termed to be regular and what benefit would flow out of the same. As per the stand of the respondent University, the post on



which the late husband of the petitioner has claimed to have worked and regularized was never sanctioned and finally upon the intervention of this court in C.W.J.C. No.12500 of 2000, 43 posts were created. Pursuant to the same, the University undertook an exercise to screen the persons who were claimants for such absorption and in the list of finally appointed/absorbed persons, the name of the late husband of the petitioner did not figure. Learned counsel further submits that the late husband of the petitioner was disengaged in the year 1999 itself and whatever work he performed after that was purely on a casual basis for which he was paid some amount.

Learned counsel for the petitioner states that the petitioner's late husband was never disengaged and thus he continued to work against the post which carried a monthly salary and other benefits. He has also brought on record few documents which go to show that even as late as in the year 2002 his services stood transferred and after that even in the year 2003 the petitioner's late husband was served a notice by the University authority asking him to show cause for not attending to his duty and why departmental proceeding should not be initiated against him. Learned counsel further submits that even the stand of the University with regard to cases of similarly situated



persons being concerned, pursuant to the order dated 7th February, 2003 passed in C.W.J.C. No.12500 of 2000, the case of the petitioner was never considered for the reason that he was not one of the writ petitioners. He points out to the concluding part of the order in which it is said that the University had to fix norms consistent with Articles 14 and 16 of the Constitution of India and then consider the cases for absorption. The case of the petitioner not having been considered only on the ground that he was not among the 71 petitioners who has moved the Court, according to learned counsel for the petitioner, violates Articles 14 and 16 and thus is in the teeth of the order dated 7th February, 2003 also.

In view of the above, learned counsel for the respondent-University prays and is granted four weeks time to file an appropriate affidavit explaining the position.

List the matter on 8th April, 2013 under Admission-I before the appropriate Bench.

The State may also seek instructions and if required file appropriate counter affidavit.”

“Order dated 01.05.2013:

Interesting question arise in this case. It is not in dispute that the petitioner’s late



husband was working in the Boy's Hostel of Tilkamanjhi Bhagalpur University, Bhagalpur (hereinafter referred to as the "University") since 1981. Having been regularized vide Annexure-A to the supplementary affidavit, being office order no.41 of 1984 from 01.08.1981, he was on the post of Darban in the pay-scale as stipulated therein. He died on 04.11.2003. The widow has come to this Court claiming death-cum-retiral dues.

On behalf of the petitioner, it is stated that there is no controversy that when University's hostel both UGC and Non-UGC were created University had notified 134 posts of Hostel Servant, Ward Boy, Cook, Darban, Mali etc. This was prior to 1976 and at that time University was competent to create the post. People were working on those posts. In 1976 the Bihar State University Act came into being with effect from 16.08.1976 wherein for the first time provision was made that no post even of Class-IV can be created by the University without the sanction of the State. As these posts were already in existence prior to 1976 and the requirement was perennial, they continued to be occupied. It may be noted that it is urged on behalf of the petitioner that according to the staffing pattern the number of posts has to be much higher but this Court does not intend to go into that issue in the present.



It appears that vacancies were being filled up on ad hoc basis and, ultimately, the matter came up before the Syndicate of the University and was considered by the Vice-Chancellor and services of various persons including the petitioner's husband was regularized with effect from 01.08.1981 in a regular pay-scale by the University's office order no.41 of 1984, which is Annexure-A to the supplementary affidavit. Thereafter, it appears that certain employees who were not getting their salary and other benefits, they approached this Court in C.W.J.C. No.12500 of 2000. The final order in the said case was passed on 07.02.2003 and it was pointed out to the Court that 134 posts were there from before but for some reasons which is not apparent from the judgment passing of final orders in that writ petition got delayed and ultimately in 2003 itself the Government informed the Court that it had taken a decision to sanction only 43 posts and to outsource the remaining posts/work. The writ petition was accordingly disposed of with a direction to regularize 43 persons from the working employees. It appears that the employees likely to be left out preferred an appeal, being L.P.A. No.269 of 2003 with analogous cases, wherein the Division Bench, inter alia, held that this Court noticed that there were 134 sanctioned posts



available, as urged by the appellants, which had been reduced to 43, was arbitrary got refused to go into the issues as it was the opinion that this was purely administrative function and ministerial function and the Court was not required to go into that question. Then, this issue was sought to be raised again in the case of Sushil Thakur v. the Tilkamanjhi Bhagalpur University & Ors. disposed of by this Court on 06.04.2011. In this case also the Court noticed that there were 134 posts which had been there since before 1976, but as the petitioner of that writ petition was within the 43 posts sanctioned in 2003 he was directed to be regularized therein.

On behalf of the petitioner, in the present case, it is urged that from the facts aforesaid it would be seen that prior to 1976 itself even though there may have been as per staffing pattern more than 134 posts but there were people working on 134 posts in the hostel. The very fact that in the year 2003 the Government took a decision to outsource the work except 43 assumes this basic fact and proves that there were many more posts on which people were already working. Learned counsel for the petitioner relies on the Full Bench judgment in the case of **Brij Kishore Singh Vs. The State of Bihar & Ors.** since reported in **1997(1) PLJR 509** wherein this



Court held with reference to Section-35 of the Bihar State University Act, 1966 that whenever a University or College or Department thereof is created, it goes without saying that it is to be manned by people for which there is a staffing pattern. To the extent of staffing pattern, the posts would be deemed to be sanctioned. This was with reference to the 1976 Act where requirement for sanction was there, which, as noted above, was not there prior to 1976 and these posts were admittedly pre-existing with people already working there.

The stand of the University in the supplementary counter affidavit is that the Chancellor in the year 1989 pointed out to the University that all persons working on unsanctioned posts should be disengaged. University informed its subordinate authorities and officers accordingly. It is said that petitioner of the present case was also disengaged. University is not in a position to produce any letter specific to the petitioner's husband or any letter which mentions the name of the petitioner's husband along with others for disengagement. In fact, petitioner has placed on record a letter which clearly suggests that as late as in the year 2002 petitioner's husband was working and he was threatened that if he does not report after joining the transferred post his salary will be stopped.



Learned counsel for the petitioner submits that the aforesaid sequence of facts would show that in law there was already deemed sanctioned post as contemplated by the Full Bench judgment (supra) on which petitioner's husband had been regularized. It is only in 2003 State took decision to retain 43 persons throwing upon for the rest of job from outsourcing which shows that positions were available. There being no letter of petitioner's husband disengagement, it cannot be said that he was not working in the University when he died in the year 2003. Accordingly, it is submitted that petitioner's husband had been working in the University in the pay-scale as per the absorption order at least from 1981 to 2003, i.e., for a period of 22 years. If we go by what University states with regard to disengagement, which is not established as yet, at least for 18 years and, accordingly, he is entitled to some death-cum-retiral dues.

In view of the facts as stated above, let the State file a comprehensive counter affidavit so that this question about status of petitioner's late husband be decided finally, which has not been decided in earlier cases.

Put up this case on 13.05.2013 under the same heading, retaining its position.”

16. Today, when the arguments have been advanced



finally, learned counsel for the appellant has brought to our notice that the appellant had filed another writ petition being C.W.J.C. No. 15875 of 2014 questioning the correctness of the order dated 03.08.2011. This writ petition was filed in the year 2014 and remained undisposed of.

17. The impugned judgment has been delivered in the present case on 22nd of March, 2018 and proceeds on the assumption that no challenge was raised to the order dated 3rd August, 2011. It appears that a submission was raised on behalf of the University that no challenge had been raised to the said order, but at the same time, we do not find the said fact having been brought to the notice of the Court or even noted therein about the pendency of C.W.J.C. No. 15875 of 2014.

18. Consequently, the learned Single Judge in the impugned order mainly on the premise that the order dated 3rd August, 2011 had not been assailed proceeded to uphold the stand of the University and rejected the writ petition of the appellant. The learned Single Judge has, however, also noted about a fact relating to non-sanction of the post, but there is no finding in this regard.

19. C.W.J.C. No. 15875 of 2014 where the order dated 03.08.2011 was under challenge came to be disposed of



on 01.11.2018 by a learned Single Judge who also does not appear to have taken notice of the judgment dated 22.03.2018, which is under challenge in the present appeal. The judgment is extracted hereinunder:-

“The instant writ petition was filed by the petitioners for a direction to the respondents to consider the case of petitioner no. 2 for appointment on compassionate ground.

Learned counsel appearing on behalf of the petitioners submits that Ganga Yadav, Night Guard in Tilka Manjhi University, father of petitioner no. 2, died in harness on 04.11.2003. Prayer of similarly circumstanced other persons was considered by the Compassionate Appointment Committee of the University but the claim of the petitioner no. 2 was not considered. Under the aforesaid circumstances, the petitioners filed CWJC No. 13283 of 2006 which was disposed of by order dated 06.05.2010. From the said order contained in Annexure-6 it is evident that this Court directed the University to take appropriate decision in the



matter within a period of three months. Thereafter, on 03.08.2011 the decision was taken that the father of petitioner no. 2 was not a regular employee and was not absorbed in the service of the University and as such the case of petitioner no. 2 was rejected.

Learned counsel representing the petitioners submits that the respondents have committed error in treating the father of petitioner no. 2 as not regularized. In fact, the University has taken decision to regularize the service of the late employee. If the father of petitioner no. 2 was regularized by the University, then rejection of the claim of petitioner no. 2 for appointment on compassionate ground is a manifest error.

In view of the fact that no counter affidavit was filed on behalf of the University in the instant case, the writ petition is disposed of with a liberty to the petitioners to file a fresh representation addressed to the Vice Chancellor of the University enclosing the document that the



father of petitioner no. 2 was in fact regularized by the University and in case such document is filed by petitioner no. 2 to demonstrate that his father was regularized and was made a regular employee, in that situation the University is required to pass a fresh order in the matter of compassionate appointment. They cannot now take the plea that the father of petitioner no. 2 died in 2003 and therefore it is too late to claim compassionate appointment.

Necessary decision on the representation enclosing the document showing regular appointment of the father of petitioner no. 2 may be taken by the University within a period of four months from the date of receipt/production of a copy of this order.

With the aforesaid, the writ petition stands disposed of.”

20. It is not understood as to why the learned counsel did not bring this fact to the notice of the learned Single Judge that the writ petition filed by the appellant had already been disposed of on 22nd March 2018 against which the present



Letters Patent Appeal has been filed and is pending before this Court. We, therefore, find that the judgment delivered in the said case is in complete ignorance of the entire proceedings in the present appeal.

21. It is in the wake of these un-informed facts that the present situation has arisen and, therefore, we are now called upon to consider the pros and cons of the aforesaid impact of the decisions as also the claim of the appellants on merits vis-a-vis the statutory provisions as also the orders passed from time to time.

22. There is one fact which remains un-resolved namely the status of employment of Ganga Yadav. The clear stand taken by the appellant throughout the litigation is that Ganga Yadav had been absorbed in 1984 and was never disengaged. This fact of disengagement or continuance has nowhere been either noted or rejected. It is evident from a perusal of the order dated 03.08.2011 extracted hereinabove, which though has noted the order dated 04.08.1984, yet has not recorded any finding on the said issue and has rather opined that since Ganga Yadav had not filed any writ petition for his absorption against the 43 posts, his case was not considered for the same. It appears from the facts that Ganga Yadav continued



in service till 4th of November, 2003 and received salary in the capacity which he claimed that was by virtue of the letter dated 4th August, 2004. This aspect was not investigated nor a finding recorded by the University.

23. The stand of the University taken in the present proceedings also is that there was no sanctioned post against which he was functioning. The University is therefore, under obligation to explain that if that was so, then in what manner and how did the University allow Ganga Yadav to continue in service and receive salary without there being any adverse order against him inspite of the claim of the University to have passed orders by virtue of the directions issued in the year 1999 by the Chancellor. It is not understood as to why the University did not apply the 1999 directives in the case of Ganga Yadav and rather appears to have allowed him to continue which, in our opinion, may have been on account of the nature of the order that had been passed for absorption on 4th of August, 2004. Not only this, the University has not been able to controvert the fact that in the year, 2002 Ganga Yadav had been transferred to a different place by the University itself. This could not have been done if Ganga Yadav's services had been disengaged. Consequently, on facts the continuance of Ganga Yadav on the



post in question and receipt of salary does not appear to have been dislodged by the University.

24. The capacity of his continuance does not appear to have been dependent on any adjustment against the 43 sanctioned posts, but if that was so, there was no justification for the University to have ignored the claim of Ganga Yadav and the stand taken in the order dated 3rd August, 2011 that his case was not considered because he was not a petitioner in the earlier petitions would be a mere excuse. The said order was under challenge in the year 2014 in a writ petition that was disposed of on 1.11.2018. Thus, the sum and substance of the entire controversy is that the status of Ganga Yadav's services was not determined as being not against any post. It is here that one of the arguments of the appellant deserves to be considered namely on the strength of the Full Bench Judgment in the case of **Brij Kishore Singh Vs. The State of Bihar & Ors.**, reported in **1997(1) PLJR 509**. In this judgment a Full Bench of this Court came to the conclusion that if a staffing pattern has been approved and the employer has proceeded to employ anybody within the staffing pattern then such a post will be deemed to have been sanctioned. This aspect has also not been considered by the University in the case of Ganga Yadav.



25. We now come to the impact of the directions issued and which are impugned in the present case as noted above. The order dated 3rd of August, 2011 was taken to have become final between the parties by the learned Single Judge while dismissing the petition; whereas the fact on record now is that undisputedly, the same had been questioned in C.W.J.C. No. 15875 of 2014, the judgment whereof dated 1.11.2018 has been extracted hereinabove. Unfortunately, the two facts namely, the delivery of the judgement by the learned Single Judge in the case giving rise to this appeal was not brought to the notice of the learned Single Judge, who disposed of the 2014 petition later on on 01.11.2018 and simultaneously the pendency of this case was not brought to the notice of the learned Single Judge who disposed of the 2014 writ petition on 1.11.2018. It is in these circumstances we find that the appellant's case vis-a-vis the order dated 3rd August, 2011 remains undetermined and for which there is a positive mandate to reconsider in the judgment dated 01.11.2018 which is admittedly final between the parties and has not been assailed.

26. Consequently, what we find is that the conclusion drawn by the learned Single Judge in the impugned judgment that the impugned order dated 3rd of August, 2011 has



become final does not appear to be based on correct facts and, therefore, is liable to be modified to the aforesaid extent.

27. We, therefore, partly allow this appeal and set aside the impugned judgment dated 22nd March, 2018 with a direction to the University to consider the claim of the appellant in the light of what has been stated above including revisiting of the order dated 3rd of August, 2011 by passing a reasoned and speaking order and in the light of rules and regulations that may be applicable on the facts of the present controversy. The decision be taken by the University within a specified period of three months from the date of presentation of the certified copy of this order.

28. The appeal is accordingly, allowed with no order as to costs.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Jagdish/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	11.07.2019
Transmission Date	

