

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9440 of 2016

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1. Ram Babu Mandal S/o Late Sanjeevan Mandal, R/o Village- Ladaura, P.O.- Ladaura Pakri, P.S.- Kudhani, District- Muzaffarpur, Presently working as peon, Chemistry Department, L.S. College, Muzaffarpur.
 2. Fekan Paswan S/o Late Sakhi Charan Paswan R/o Village- Pohiyar Bujurg, P.S.- Deshari, District Vaishali. Presently working as Ward Servant, Duke Hostal/Peon in Examination Department, L.S. College, Muzaffarpur.
 3. Ram Chandra Sah S/o Musafir Sah working as Peon presently posted at Principal's Office/Residence L.S. College, Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Human Resources Development, Bihar, Patna.
2. The Principal Secretary, Department of Human Resources Development, Bihar, Patna.
3. The Secretary, Higher Education, Department of Human Resource Development, Bihar, Patna.
4. B.R.A. Bihar University, Muzaffarpur through its Registrar.
5. The Vice-Chancellor, B.R.A. Bihar University, Muzaffarpur.
6. The Registrar, B.R.A. Bihar University, Muzaffarpur.
7. The Principal, L.S. College, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Manoj Kumar Manoj
For the State	:	Mr. Manish Kumar, AC to AAG-6
For the University	:	Mr. Sandeep Kumar
		Mr. Vikas Ratan Bharti

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 09-05-2019

Shorn of the details, it might suffice to state that the petitioners were appointed in the year 1990 on daily wages by the Principal of the College in question i.e. the Langat Singh College, Muzaffarpur, however, subsequently, they were terminated vide letter dated 30.9.1994 on account of having



been appointed after the cut off date i.e. 10.5.1986. Subsequently, it appears that some persons belonging to the same group approached this Court and this Court by a judgment dated 1.8.1997 allowed the writ petition and set aside the order of termination of the said group of persons in a writ petition bearing C.W.J.C. No. 116 of 1995, following the judgment rendered by a Full Bench of this Court in the case of ***Braj Kishore Singh & Ors. Vs. State of Bihar & Ors.***, reported in (1997) 1 PLJR 509. Thereafter, the said group of persons along with the petitioners herein, belonging to the same group, were reinstated by order dated 12.10.1998 by the Principal of the College. Subsequently, it appears that the persons belonging to the same group, who had approached this Court earlier, were regularized by an order dated 8.6.2004 issued by the B.R.Ambedkar Bihar University, Muzaffarpur.

2. The petitioners being aggrieved by non-consideration of their case for regularization have approached this Court by way of the present writ petition. Reference has been placed on a judgment rendered by the Hon'ble Apex Court in the case of ***Amarkant Rai vs. State of Bihar & Others***, reported in 2015 (8) SCC 265, paragraph nos. 5, 12, 13 and 15 whereof are reproduced hereinbelow:-



“5. Learned counsel for the appellant contended that the appellant served on the post for 29 years on daily wages and even as per the decision in para 53 in Umadevi's case (supra), irregular appointment of employees who have worked for more than 10 years should be considered on merits. It was contended that the appellant has been working in a sanctioned post and his appointment was not illegal but in the facts and circumstances of the case, his appointment could only be irregular appointment entitling him for regularization. It was submitted that Three Members Committee as well as the High Court did not keep in view that the case of the appellant was recommended for regularization.

12. Elaborating upon the principles laid down in Umadevi's case (supra) and explaining the difference between irregular and illegal appointments in [State of Karnataka and Others Vs. M.L. Kesari and Others.](#), this Court held as under:

"7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Secretary, State of Karnataka and Others Vs. Umadevi and Others, if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum



qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

13. Applying the ratio of Umadevi's case, this Court in Nihal Singh & Others Vs. State of Punjab & Others, directed the absorption of the Special Police Officers in the services of the State of Punjab holding as under:

"35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor with reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal



the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits on a par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is-the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks."

15. Considering the facts and circumstances of the case that the appellant has served the University for more than 29 years on the post of Night Guard and that he has served the College on daily wages, in the interest of justice, the authorities are directed to regularize the services of the appellant retrospectively w.e.f. 03.01.2002 (the date on which he rejoined the post as per direction of Registrar)."

3. Per contra, the learned counsel appearing for the University submits that the University has sought for details regarding the petitioners for the purposes of considering this case for regularising their services and are awaiting the same, hence, upon receipt of the same, the University would consider the case of the petitioners for regularization. Though, it is true that this Court does not possess the powers, possessed by the Hon'ble Apex Court under Article 142 of the Constitution of India, but then this Court can obviously direct the respondents



to consider the case of the petitioners for regularization of their services in view of the peculiar facts and circumstances of the case, as also the fact that some of the persons of the same group have already been regularized and keeping in mind the observation made by the Hon'ble Apex Court in the judgment rendered in the case of *Amarkant Rai* (supra) since here also, the petitioners have continued in service for about 29 years.

4. Having regard to the facts and circumstances of the case, the respondent University is directed to consider the case of the petitioners for regularization of their services in light of the facts stated hereinabove, as also the law laid down by the Hon'ble Apex Court in the case of *Amarkant Rai* (supra) within twelve weeks from the date of receipt / production of a copy of this order.

5. The writ petition stands disposed of on the aforesaid terms.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.5.2019
Transmission Date	NA

