

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1893 of 2016

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1. Baidyanath Singh, son of Shri Ram Chandra Singh, Resident of Village-Bhuali Tola, Police Station-Yadipur, District-Gopalganj.
 2. Rameshwar Singh, son of Late Munnilal Singh, Resident of Village-Udant Rai Ka Bangra, Police Station – Thawe, District – Gopalganj.
 3. Hari Shankar Prasad Singh, son of Shri Tarkeshwar Prasad Singh, Resident of Village-Dhanha, Police Station – Dhanha, District-West Champaran.
 4. Aarti Singh, daughter of Late Ram Kripalu Singh, wife of Baidyanath Singh, Resident of Village-Bhuali Tola, Police Station-Yadipur, District-Gopalganj.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
3. The Joint Secretary, Human Resources Development Department, Government of Bihar, Patna.
4. The Director, Higher Education, Human Resources Development Department, Government of Bihar, Patna.
5. The Jai Prakash University, Chapra through its Registrar, Chapra.
6. The Vice-Chancellor, Jai Prakash University, Rahul Sawakrityan Nagar, Chapra.
7. The Registrar, Jai Prakash University, Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Janardan Singh, Senior Advocate
For the State	:	Mr. Gautam Kr. Yadav, AC to GP26
For University	:	Mr. Anjani Kumar, Senior Advocate
		Mr. Nagendra Kumar Singh, Advocate
		Mr. B. K. Pathak, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 05-09-2019

Heard learned counsel for the petitioners and learned counsel for the State as well as learned counsel for the University.

The present writ application is the fourth round of the writ application.



The petitioners herein have approached this Court earlier in C.W.J.C. No. 1739 of 1994 for redressal of their grievances. The writ application was disposed of by the Division Bench by the order dated 07.07.1994 (Annexure-1).

The Division Bench noticed various factual aspect and the policy decision of the Government dated 20.05.1991 with regard to creation of posts in non-teaching cadres. The Court disposed of the writ application with liberty to the petitioner to file representation before the Vice Chancellor of the University for regularization of service, after factual inquiry by the Authority of the University.

In the second round of litigation writ application was filed by the petitioners being C.W.J.C. No. 8915 of 1997. On 24.11.1997 with the consent of the parties that the case of petitioners are covered by the decision of the Full Bench, the writ application C.W.J.C. No. 8915 of 1997 was disposed of. The Court noted the agreement of the State Government and the Bihar State University College Employees Federation for regularization of the services of the employees and the scheme of regularization dated 10.05.1991. In the light of the judgment of full Bench in the case of *Braj Kishore Singh and Others Vs. The State of Bihar and Others*, reported in *1997 (1) PLJR 509*, the Court directed the



respondents J.P. University to take care of the staffing pattern scheme of the Government and after necessary enquiry the University was directed to decide the case of the employees, who are working against such staffing pattern/deemed sanctioned category the Court also directed the University to take appropriate decision to regularize services of the petitioners and release the admitted arrears of salary of the petitioners working against the deemed sanctioned post/staffing pattern.

The third writ application C.W.J.C. No. 8313 of 1999 was filed by the writ petitioners in view of the subsequent development i.e. letter of the Registrar of the University dated 26.04.1999, whereby report was sent to the State Government that the appointment has not been made as per the procedure prescribed for the appointment. The co-ordinate Bench of this Court has taken into consideration the entire relevant facts and different decisions of the State Government as to staffing pattern and the judgment of the various Courts as well as the judgment of the Apex Court in the case of *Secretary, State of Karnataka and others Vs. Umadevi and others*, reported in (2006) 4 SCC 1 as well as various other judgments. The report of the Registrar was submitted in the background of the fact that the predecessor of the J.P. University has admitted the appointment of the employees against staffing



pattern and recommended the case of the petitioner for approval to the State Government vide letters dated 18.04.2019, 17.09.1994, 07.12.1995 and 11.05.1996 as well as letter of the J.P. University dated 10.09.1998. The co-ordinate Bench came to the conclusion that the letter of the Registrar, J.P. University contains contradictory stand from the predecessor of the J.P. University as well the same J.P. University. After detailed discussions of facts as well as the relevant statutes and regulations, the writ petition was disposed of in following manner:

“In view of the aforementioned discussions and in the facts and circumstances of the case, the action of the respondent J.P. University cannot be held to be justified in law in reversing all the previous recommendations made in favour of the petitioner for the last several years prior to the issuance of the impugned letter dated 26.04.1999 (Annexure-25). Respondent J.P. University was required to make an enquiry with regard to the appointment of the petitioners as per the earlier order of this court (Annexure-17). The University made the necessary enquiry and recommended the cases of the petitioners for regularization and for payment of their salary followed by clarification made by its in response to the query made by the State government in its different letters, stating the details of the relevant facts forming the basis of such recommendation. Respondent J.P. University as such now at this stage is not entitled in



law to reopen the matter again and again. Accordingly, this court has no hesitation in holding that the impugned letter reporting dated 26.04.1999 (Annexure-25) submitting the report of the State Government that the appointments of the petitioners can be held to be illegal cannot be sustained in law as such the same is accordingly quashed. Consequently the respondent State Government/ J.P. University is hereby directed to regularize the services of the writ petitioners as also directed by this court earlier by order dated 24.11.1997 (Annexure-17) and issue necessary orders in their favour within a period of four months. The respondent State Government is further directed to release requisite fund as per the previous requisition of the University for payment of the arrears of salary of the petitioners preferably within a period of three months. If need be the J.P. University will be at liberty to send further requisition to the State Government in the appropriate department for release of fund. The University shall pay the admissible arrears of salary to all the writ petitioners within a period of one month thereafter on receipt of the fund from the State Government.

The writ application is accordingly allowed with the above observations/direction with the cost of Rs. 5,000/- each to be paid by the respondent no. 1 and respondent no.3.”

The University preferred LPA No. 143 of 2010 against order of learned Single Judge, whereby State preferred LPA No.



1430 of 2010, the LPA court noted the submissions of State as well as the University who preferred appeals against the decision of the learned Single Judge. Both the LPA No. 143 of 2010 and LPA No. 1430 of 2010 were dismissed by order dated 19.03.2012 with only modification as to payment of exemplary cost of Rs. 5,000/-. The Division Bench has expressly rejected the contention of the University that the appointment of the unofficial respondents/petitioners herein was not on sanctioned post as the Court on consideration of the material available held that there is no such material to entertain such plea of the appellant/State or the University.

Aggrieved by the decision of the Division Bench the respondent/J.P. University filed SLP, which was dismissed on 01.07.2013. Thus the decision of the learned Single Judge and the Division Bench holding that the appointment of the petitioner in the University is against the sanctioned/deemed sanctioned post stands approved by the LPA Court and there was no interference by the Apex Court in SLP.

After dismissal of the SLP, the University wrote letter to the Secretary, Higher Education on 03.12.1998 with a request to State to regularize the services of the petitioner and vide



Annexure-11 and thereafter vide Annexure-12 dated 20.06.2014, the service of the petitioners were approved w.e.f. 24.11.1997.

The State Government thereafter released fund to the University with regard to the payment of the lawful dues of the petitioners. At one point of time this Court had noted the factual aspect with regard to the allocation of fund and its utilization this Court has noted that out of fund released by the State Government, one crore is still lying with the University for payment of dues of the petitioners. This fact was not controverted by way of specific counter affidavit. Only vague submission and vague statement has been made in the present writ petition by the University.

In this writ petition, the petitioners have prayed for the following relief as:

(i) “For quashing that part of the order dated 20.06.2014 passed by Education Department, Government of Bihar, issued under the signature of the Joint Secretary of the said department by which the services of the petitioners were regularized from the date of order of this Hon’ble Court passed in C.W.J.C. No. 8915 of 1997.”

(ii) For issuance of an appropriate writ/order or direction directing the respondents to fix the salary of the petitioners in their respective pay-scale from the date of their initial



appointment and to pay the arrears of salary to the petitioners from the date of their respective joining with 12% interest.

(iii) For grant of any relief/reliefs to which the petitioners are found entitled too.”

Mr. Janardan Singh, learned senior counsel appearing on behalf of the petitioner would submit that the full Bench of the Patna High Court has read down the scheme of Section 35 of the Bihar State University Act and relying upon the judgment of the Apex Court in ***Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra***, reported in ***AIR 1990 SC 1607*** held out that the petitioners who were working since long, are entitled to regularization of their services from the date of their initial entry.

Referring to the judgment of the Division Bench in second ***Braj Kishore Singh and Others Vs. The State of Bihar and Others (Annexure-18)***, Mr. Janardan Singh, learned senior counsel would submit that the Division Bench of this Court vide Annexure-18 has already clarified the consequential relief in terms of the judgment of the Full Bench in ***Braj Kishore Singh (supra)***.

The Division Bench after quoting the relevant part of the judgment of the Full Bench held out that the appellants are entitled to payment of salary for the period prior to regularization and allowed the appeal and as such the petitioners of this case are also



entitled to the benefit of payment of arrears of salary prior to their regularization of service.

Per contra, learned senior counsel Mr. Anjani Kumar, appearing for the University would submit that the judgment of the Apex Court in the case of *Secretary, State of Karnataka and others Vs. Umadevi and others*, reported in (2006) 4 SCC 1, is settler on the point that regularization is not a mode of appointment, referring to paragraphs 52 to 54 of the aforesaid judgment of Apex Court, learned senior counsel for the University would submit that regularization of petitioners is in teeth of the judgment of Apex Court in Uma Devi case (Supra) and therefore petitioners are not entitled to any relief. He further relied upon the judgment of the Full Bench of the case in *Ram Sewak Yadav Vs. State of Bihar*, reported in 2013 (1) PLJR 964 (FB). He also relied upon the judgment of the Division Bench of this Court in the case of *Nand Lal Bhagat and Ors. Vs. The State of Bihar and Ors.*, (L.P.A. No. 586 of 2013) to contend that regularization of petitioners is impermissible.

However, he has no answer to the issue of *fait accompli*, firstly, that the Single Judge has passed order after noticing the judgment of the Apex Court in the case of Uma Devi (supra) and the judgment of learned Single Judge was approved by the



Division Bench and the Apex Court has not interfered with the judgment of the learned Single Judge and the LPA Court and thus the decision of the Single Judge, so far as regularization is concerned inter party is final and binding between the parties to the proceeding, the State or the University cannot be allowed to challenge the legality and validity of the decision which has become final as the law is well settled that even wrong order is capable of consequence, if it attains finality it is binding between the parties.

Secondly, Mr. Anjani Kumar, has no answer to the situation where the Court has recommended the case of the petitioner for regularization after the judgment of the Apex Court, as it would be evident from Annexure-11 and follow up of decision of the State Government Annexure-12 granting the approval of the recommendations of the University and recognizing the regularization of the petitioner w.e.f. 24.11.1997 estoppes the university from reopening the matter of regularization of petitioners which has been acted upon and become final.

Mr. Anjani Kumar, learned senior counsel for the University has relied upon the judgment of **the Apex Court in Civil Appeal No. 2356 of 2018** to contend that in similar facts situation, the Apex Court has dismissed the appeal where



appointment was made *de hors* the procedure prescribed by the University Act for appointment.

Before proceeding, any further the Court would like to refer few judgments of the Apex Court which has bearing in this case, firstly, the judgment of the Apex Court in the case of the *State of Bihar and Another Vs. Sunny Prakash and Others*, reported in *(2013) 3 SCC 559*, where the Apex Court considered the effect of the agreement between the State and the Federation of the non-teaching employees. The objection of the State was that the agreement was non statutory in character and that cannot be relied upon, the objection of State was rejected by the Apex Court. The Apex Court noted in paragraph 23 and 24 are as follows:

“23. We also make it clear that though the High Court termed the impugned order as interim in the nature, considering the fact that the writ petition came to be filed by a student in the interest of the student community by writing a letter which was treated as a PIL, no further order need be passed in the said writ petition, namely, CWJC No. 10870 of 2008 pending on the file of the High Court at Patna and it stands closed.

24. In view of our conclusion, we direct the State of Bihar to implement the impugned order of the High Court dated 07.08.2008 within a period of three months from the date of receipt of copy of this judgment. The appeal filed by the State of Bihar is



dismissed with the above direction. There will be no order as to costs.”

The judgment of the Apex Court in the case of ***State of Bihar and Another Vs. Sunny Prakash and Others***, reported in ***(2013) 3 SCC 559*** is settler on the point that the agreement, irrespective of the fact that it was not in statutory form, if reached finality it binds the respondent and therefore the entire action based on the agreement must be read in favour of the employee. The Court directed the State of Bihar to implement the order of the High court which was for enforcement of the agreement in between the Federation and the State. The fact situation in which principle of staffing pattern was introduced and decision as to regularization was taken by the respondent/State is on the similar line and the judgment of the Apex Court in case of Sunny Prakash (supra) is fully attracted. Moreover, the judgment of the Full Bench has read down the scheme of Section 35 of the Bihar State Universities Act and relying on Full Bench decision this Court in earlier round of proceeding has directed for consideration for regularization of petitioner as such the Court is of the considered view that it is too late to question the regularization of the petitioners by the Universities once they have acted upon the decision of the State Government after the judgment of Single Judge and Division Bench and dismissal of the SLP by the Apex



Court, as discussed hereinabove and therefore it does not lie in the mouth of the University to take the plea that there was infirmity in regularization. Second judgment of the Apex Court was reordered in the case of *Amarkant Rai Vs. State of Bihar and Ors.*, report in **(2015) 8 SCC 265**, the Apex Court has the occasion to consider the judgment in the case of Uma Devi (supra) which has been highlighted by Mr. Anjani Kumar, Senior Advocate of the Universities, in that case the petitioner, who was allowed to work for 29 years as daily wager was considered by the Apex Court and the appeal of Amarkant Rai was allowed, the Court directed the authority to notionally regularize the service of the appellant with retrospective effect i.e. 03.01.2002 or the date on which the post became vacant whichever is later and without monetary benefit for the above period, the period from 01.01.2010 to 03.01.2010 shall be taken for continued service and pensionary benefit.

Law as normative science is flexible and it applies to a situation which is not covered by broad proposition. As discussed in Amarkant Rai (supra) case by the Apex Court, the Apex Court has considered the judgment of Constitution Bench in Uma Devi (supra) case and even in the situation of working as daily wager for 29 years, the Hon'ble Supreme Court set aside the order of the High Court. The principles discussed in Amarkant Rai (supra) case



applies with full force in the present case. Therefore, neither the State nor the University can be allowed to question the issue of regularization or reopen the issue of regularization of petitioners while defending the writ petition.

The Court is now required to address the issue relating to payment of arrears from the date of initial appointment of the petitioners who claimed that they have been appointed in between 1979 to 1983 as Lab Incharge, Lab Technician, Store Keeper in Gopalganj College, Patna, Gopalganj. There is no dispute that the aforesaid posts are essential for running College where instruction in science is imparted.

In view of the Full Bench judgment in Braj Kishor Singh's case and the follow up action after the judgment of the Single Judge, Division Bench and SLP in this case the issue of regularization of petitioners is now a closed chapter. The attempt to reopen the issue of legality and validity of the regularization is not permissible. So far as the issue with regard to the payment of arrears are concerned the petitioners have admitted that they have been granted monitory benefit w.e.f. 24.11.1997. They want monitory benefits from the date of their initial appointment.

The concept of staffing pattern and deemed sanctioned post arising out of the agreement between the State of Bihar and



the Employees Federation is subsequent to their initial appointment. The cut off date for consideration as per the Full Bench judgment in the case of Braj Kishor Singh (supra) is 10.05.1986 and as such the Court is of the considered view that petitioners are entitled for counting of service for all practical purpose including for the purpose of pensionary benefit w.e.f. 10.05.1986 and not from the date of initial entry of their service prior to 10.05.1986, because crucial date for the purpose of deemed sanctioned post is 10.05.1986 and there is not existence of deemed sanctioned post in terms of the decision of the State Government prior to 10.05.1986 as the cut off date was fixed in terms of the decision of the State Government.

Adverting to the issue of payment of arrears of salary, the Court is of the considered view that in the present application the Court cannot issue any direction or mandamus in favour of the petitioner in view of the principle enunciated by the Apex Court in the case of *Union Of India & Anr. vs Tarsem Singh*, reported in **2008 (8) SCC 648**, wherein the Apex Court has in most unequivocal terms laid down that monitory benefit in service matter cannot be granted from a date anterior to three years of claim or 3 years from the date of filing of the writ application, whichever is later.



In view of the judgment of the Apex Court in Tarsem Singh (Supra) the Court is not inclined to grant any indulgence for payment of arrears of salary for the period prior to 24.11.1997. But petitioners would be entitled for counting service w.e.f. 10.05.1986 the cut of date of staffing pattern posts.

In the result, the writ petition is party allowed to the extent indicated hereinabove.

(Anil Kumar Upadhyay, J)

S.Katyayan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16-09-2019
Transmission Date	NA

