

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.476 of 2012
In
Civil Writ Jurisdiction Case No.8221 of 2009

1. The B.N.Mandal University, Madhepura, through its Registrar, B. N. Mandal University, Madhapura
2. The Vice Chancellor, B.N. Mandal University, Madhepura

... Respondents ... Appellant/s

Versus

1. Prof. Usha Srivastava, Wife of Late Mithilesh Kumar Sinha, Resident of Mohalla-Rajni Chawk Bhata Bazar, P.S.-K. Hat, District -Purnia

..... Petitioner / respondent

2. The State of Bihar, the Secretary, Human Resources Development Department, Government of Bihar, Patna
3. The Principal, Ram Lal College, Madhawnagar, Dhandaha, Purnia
4. The Secretary Higher Education Department, Government Of Bihar, Patna

... Respondents ... Respondent/s

Appearance :

For the Appellant/s	:	Mr. P. N. Shahi, AAG 6
		Mr. Ritesh Kumar, Advocate
For the Respondent/s	:	Mr. Amaresh Kumar Sinha, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 17-12-2020

Heard learned counsel for the parties.

Aggrieved by judgment and order dated 18.10.2011
passed by learned Single Judge of this Hon'ble Court passed in
C.W.J.C. No. 8221/2009 allowing the writ petition and
directing the University to pay the entire arrears of salary and
also pay the current salary to the petitioner / respondent, the



University has preferred this L.P.A.

Briefly stated the facts of the case is that writ petitioner was appointed on 10.7.1985 as a Lecturer in Sanskrit in R. L. College, Madhav Nagar, Purnia by the Secretary of Managing Committee of the college against second post.

R. L. College, Madhav Nagar, Purnia was made constituent in 4th phase under L. N. Mithila University vide Government notification no.1095 dated 19.8.1986. On 10th January, 1992, a new University in the name of B. N. Mandal University was established after carving out certain territorial area of L. N. Mithila University and R. L. College, Madhav Nagar, Purnia became a constituent college of B. N. Mandal University.

Forty colleges were converted into constituent colleges under different universities and soon after taking over, dispute arose among the teaching and non-teaching employees of said college with respect to their entitlement of taking over of their services and the matter travelled upto Supreme Court in Civil Appeal No. 6098 of 1997 and Hon'ble Supreme Court constituted a one man commission headed by Justice S. C. Agrawal to conduct an enquiry regarding number of sanctioned posts and persons who are eligible for absorption against said



posts.

In compliance of said order, Commission thoroughly inquired the matter and found that writ petitioner was appointed in the college on 10.7.1985 against a post which was recommended to the State Government for creation of post prior to 30.4.1986 as such, writ petitioner was shown in the R I category.

Annexure No. 1A consists of total sanctioned posts of teachers subject wise.

Annexure No.2A consists of recommendations made by the University subject wise to the State Government upto the cut-off date, i.e., 30.4.1986.

Annexure III A consists of name of teachers subject-wise and college wise who were working on the date of taking over of the college (name of writ petitioner figures at serial no.41- R I).

Annexure III B consists of name of such teachers who did not possess the requisite qualification on the date of appointment.

Annexure III C consists of name of teachers who did not possess the requisite qualification on the date of appointment but became eligible after appointment.



Annexure III D consists of name of teacher who did not possess the requisite qualification for appointment which included the name of writ petitioner, namely, Smt. Usha Srivastava, Lecturer in Sanskrit.

Annexure IV A consists of name of teachers subject wise who are eligible for absorption in which name of petitioner did not appear.

Commission found, as detailed above, that writ petitioner does not fulfill the required qualification for absorption, hence, Commission placed name of petitioner in the category not fit for absorption. Accordingly, her name was not included in the list which was prepared by the Commission for absorption of such persons.

Hon'ble Supreme Court disposed of aforesaid civil appeal with a direction to the university to regularize the services of teaching and non-teaching employees of the 4th phase colleges in the light of recommendation of Justice Agrawal Commission as well as in the light of direction of this Hon'ble Court in a case reported in 1997(3) PLJR 509.

It is clear from the report that writ petitioner did not possess requisite qualification either at the time of appointment or improved her qualification after appointment so she was



found not eligible for the post of Lecturer in Sanskrit.

Hon'ble High Court, while allowing the writ application, directed the University to consider absorption of those persons whose name figure in Government notification, contained in letter no.181 "C" dated 19.12.1989. In compliance of order dated 12.10.2004 passed by Hon'ble Supreme Court, a sub-committee was constituted for verification of absorption and, accordingly, vide notification dated 28.02.2006, writ petitioner was absorbed with a condition that payment of salary shall be made on receipt of grant from the State Government.

Copies of notification regarding absorbing the service were sent to the State Government including the category of writ petitioner but State Government directed to terminate such categories of absorbed employee from service and accordingly, vide letter dated 5.6.2009, show cause notice was issued to her for termination from service.

Writ petitioner filed a writ petition being C.W.J.C. No.8221 of 2009 for a direction to the authorities to make payment of arrears of salary and month to month salary as from March, 2006 she has not been paid any salary although her name figures in R I category and her services has been absorbed, however, it was suppressed that she was not qualified



to be appointed as Lecturer and as such, the Agrawal Commission had not recommended her name for absorption although she was in R I category.

Although she was absorbed by a notification issued by the University, as she was in R I category ignoring the finding of Agrawal Commission against her that she is not eligible to be appointed as Lecturer at the time of her appointment nor she was eligible to be appointed subsequently. There is specific finding against her given by the Commission that she is not fit for absorption.

This LPA was directed to be listed after disposal of SLP (Civil) No.12591 of 2010 (CA No.002703/2017) (Krishna Nand Yadav Vs. Magadh University & Ors.) which was decided by the Apex Court on 31.8.2017. Paragraph nos.20, 21 and 24 of which reads as follows:-

“ 20. In our opinion, the incumbents with respect to whom the favourable direction have been made by Justice Sinha, have to be acted upon by State Governments, and as such, they be implemented forthwith without any further delay within the outer limit of three months.

21. With respect to the cases of incumbents not found fit for acceptance by the Commission. They are free to approach the concerned High Court, as prayed, for redressal of their grievance, if they so desire. In case petitions are filed before the High Courts, it is



expected that petitions would be dealt with as expeditiously as possible preferably within a period of one year.

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24. It is made clear that in the cases where recommendations have not been made, we have not gone into the merits of such cases. All questions with respect to the incumbents whose cases have been rejected by Justice Sinha Commission are kept open.”

For the reasons, as stated above, as writ petitioner was not entitled to be absorbed as a Lecturer contrary to the report of Commission and, as such, State is not obliged to pay her salary or arrears of salary as well as current salary. Accordingly, LPA is allowed and writ petition is dismissed.

However, it is an admitted fact that writ petitioner was kept in R I category and she continued to teach in college prior and subsequent to college becoming constituent and she was paid salary till February, 2006 and was absorbed by the University by a notification issued in 2006 although statement has been made that show cause notice for termination was issued to her in 2009 but her services were never terminated.

In such circumstances, she cannot be denied wages for the work she performed and at present, she is more than 70 years old and retired from service, as such, University is



directed to pay a lump sum amount of rupees ten lakhs to her for which, University will send requisition to the State Government within three months and same shall be released by the State Government within three months thereafter and to be paid to the writ petitioner / respondent by the appellant B. N. Mandal University. Payment of lump sum of rupees ten lakhs is conditional that writ petitioner / respondent will not raise any further claim of any nature from the University or the State.

With aforesaid observations, the LPA is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.03.2021
Transmission Date	NA

