

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7204 of 2016

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Birendra Narayan Choudhary Son of Late Ekbal Narayan Choudhary
resident of Village - Kothia, Police Station - Bhairav Asthan, District -
Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resources Department, Government of Bihar, Patna.
3. The Vice-Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
4. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
5. The Governing Body , Krit Narayan Kamakhya Sanskrit College, Mahrail, Madhubani through its Secreta
6. The Principal, Krit Narayan Kamakhya Sanskrit College, Mahrail, Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava Mr.Akash Raj
For the Respondent/s	:	Mr. Ajit Kumar
For the University	:	Mr. Binoda Nand Mishra

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 23-11-2021

1. Heard Mr. Abhinav Srivastava, the learned counsel for the petitioner, Mr. Binoda Nand Mishra, the learned Advocate for the respondent / University and Mr. Ajit Kumar, learned Advocate for the State.



2. This writ petition has been filed for a direction to the respondent authorities for making payment of dues of salary of the petitioner from April 2003 to February 2013 and 50% of salary from March 2013 to September 2015 on which date, he superannuated from service and other benefits which have been listed in paragraph -1 of the writ petition.

3. Some confusion appears to have been created in the concerned college which is an affiliated college of the respondent / University.

4. The petitioner was appointed as a lecturer in Economics in the year 1978 after observing the due procedure for appointment of lecturers in a private affiliated college. There was an another advertisement in the year 1981 for appointment of lecturer in Economics subject in the college and the petitioner was again appointed against such advertisement. His appointment was confirmed by the syndicate of the University and later was approved by the College Service Commission.

5. In the college, there are only ten sanctioned



posts of lecturers including that of the Principal. Out of the said ten posts, one is reserved for English, the other for Sanskrit and one each for Hindi and one of the subjects of Social Science. It would also be relevant here to state that since the college in question is a private affiliated college, it is a deficit grant in-aid college and the State Government releases the deficit grants for payment of salary to the employees of the college who are appointed in accordance with law against the sanctioned vacant posts.

6. The whole dispute began when one Jai Ram Jha was appointed against an un-sanctioned post of *Maithali* subject. He was being paid his salary against the sanctioned post of Hindi on which one Umesh Mishra had been appointed. Since, Umesh Mishra was not being paid his salary, he approached this Court vide C.W.J.C. No. 5444 of 1996. In the aforesaid writ petition, Jai Ram Jha was respondent no. 6.

7. While disposing of the aforesaid writ petition, the Bench observed that it was nobody's case that any other person was working against the sanctioned post of lecturer in



Hindi. The only dispute raised was as to whether the petitioner therein was working against the said post or respondent no. 6 had been working on that post. The Court, on finding that the petitioner therein (Umesh Mishra) was still functioning as a lecturer in Hindi, came to the conclusion that even if the appointment of Umesh Mishra was not regular in terms of the provisions of the Act and he was working by way of an *Ad-hoc* agreement on the basis of temporary concurrence of the College Service Commission, the college authorities were under an obligation to pay him the salary for the period that he had actually performed his duties and his services were temporarily approved by the Commission. However, while parting with the case, the Bench further clarified that the decision and direction in favour of Mr. Umesh Mishra will not stand in the way of respondent no. 6 (Jai Ram Jha) for payment of his salary against the post of lecturer in the subject *Maithali* "which stood sanctioned". This side wind of an observation of the learned Single Judge was taken as a direction for treating the post of *Maithali* as a sanctioned post. Based on this



observation, the University stopped making payment of salary to aforesaid Jai Ram Jha because there were only four posts of lecturers available in four subjects out of ten in the college, one being a subject under Social Science which was never specified.

8. The stoppage of salary of Mr. Jai Ram Jha (*Maithali*) led him to approach the Court vide C.W.J.C. No. 4437 of 1999. A Bench of this Court while hearing that writ petition took note of the judgment passed in C.W.J.C. No. 5444 of 1996 referred to above and concluded that he also deserved to be paid on parity.

9. When this order was passed, the University chose to make payment to Umesh Mishra and Jai Ram Jha that only after stopping the payment to the petitioner who was working on sanctioned post of Economics in the college.

10. The petitioner, thereafter, approached this Court vide C.W.J.C. No. 9362 of 1999 seeking straightening of records to the extent that even if the subject *Maithali* was deemed to have been sanctioned, that would not have excluded an earlier sanctioned post of Economics against



which the petitioner was appointed and had been working since before. The petitioner was paid his salary till the year 2003 whereafter it was stopped because of his deemed to have been working against on a non-sanctioned post.

11. The Bench did not agree with the arguments advanced on behalf of the petitioner as it was of the view that the petitioner would have been well advised to challenge the judgment and order passed in C.W.J.C. No. 5444 of 1996 (Umesh Mishra) dated 12.01.1998. Since the petitioner was adversely affected by judgment in that case, he could have challenged it even without being a party to the aforesaid judgment. The petitioner was thus given the liberty to prefer an appeal against the order passed in C.W.J.C. No. 5444 of 1996 with the observation that in case the issue of limitation would ever arise, he would be perfectly within his rights to seek condonation of such delay.

12. The reason for the petitioner approaching this Court now is that after the dismissal of the writ petition preferred by him (C.W.J.C. No. 9362 of 1999), the University had constituted a Three Men committee to inquire



into the matter. The committee found that the petitioner had been regularly appointed against the sanctioned post of Economics and that he ought to have been paid his salary on a regular basis. The committee was also of the view that the "deemed to be sanctioned" post in the subject of *Maithali* by virtue of the judgment passed in C.W.J.C. No. 5444 of 1996 be also ratified by the Government so that the necessary payments could be made to the lecturer appointed against the "deemed to be sanctioned" subject of *Maithali*.

13. Mr. Abhinav Srivastava, the learned counsel for the petitioner has very emphatically asserted that notwithstanding the two orders passed by this Court in C.W.J.C. No. 5444 of 1996 and C.W.J.C. No. 4437 of 1999, there was no order or direction of treating the sanctioned post of Economics in the concerned college to be excluded from the list of such four subjects for which staffing pattern had been provided and the petitioner had been working against one such sanctioned post in the subject of Economics. It has also been brought to the notice of the court that the respondent / University vide its letter no. 867



dated 21.06.2021 has made a request to the State Government for sanction of Rs. 54,49, 524/- for payment of salary to the petitioner. Another request has been made by the University on 17.07.2021 to the State Government for sanctioning of total number of eleven posts in the college so as to accommodate either *Maithali* or Economics as the case may be against such staffing pattern in the Sanskrit College.

14. From the last of the affidavits filed by the State Government, it appears that the aforesaid letters of request by the University has been considered by the Education Department but the same has been rejected. The State Government has gone on to direct that whoever has been instrumental in wrong disbursement of money towards salary be made responsible and such money be recovered from him.

15. From the conspectus of the afore-noted developments, it becomes absolutely clear that there never was there any dispute with respect to the appointment of the petitioner against the sanctioned post of Economics. He was being paid his salary on a regular basis till 2003. Even after



the stoppage of his salary for good two years, the petitioner was again paid his salary but it was with a cut of 50% so that the balance 50% would be given to the person serving on the post of lecturer against so called sanctioned post of *Maithali* in the college.

16. What has really caught the attention of this Court is that nowhere was the sanction of the Economics subject was in dispute but the petitioner serving as a lecturer in the said subject has been left totally high and dry. True it is that according to the staffing pattern, only one subject was sanctioned under the Social Science category. Nonetheless, since there was no dispute with respect to the subject Economics, no order of this Court could have been read or interpreted in any manner which could lead to the inclination of the consideration of Economics subject as the sanctioned subject against which the petitioner had been working.

17. Mr. Srivastava contends that the observation made by the Bench in the case of Umesh Mishra (C.W.J.C. No. 5444 of 1996) was misunderstood and misinterpreted and the claim of the petitioner was rejected in order to



comply with the two orders passed by this Court referred to above in its entirety.

18. The reason for the petitioner to approach this Court again after the dismissal of the case filed by him seeking payment of salary is that after the order was passed against him, the University chose to constitute a Three Men committee to find out that correct state of affairs. The petitioner being very sanguine and hopeful that his claim is absolutely justified, did not approach the Division Bench as was suggested by this Court. He further submits that the order passed by this Court in C.W.J.C. No. 9362 of 1999 (Birendra Narayan Choudhary vs. the State of Bihar) ought not to be taken as an impediment by this Court in passing a fresh order after the Three Men committee report violating the claim of the petitioner. As an alternative, it has also been suggested that the State be directed to release funds to meet the seventh unit in the college with a direction to the University to make payment of salary dues to the petitioner. It has also been argued that the State be directed to sanction the eleventh post so that nobody is subjected to



any injustice. He has also reiterated that in the two decisions passed by the Bench of this Court in C.W.J.C. No. 5444 of 1996 and C.W.J.C. No. 4437 of 1999, the petitioner was neither a party nor the discussion in such orders ever veered around the subject of Economics as one of the sanctioned subjects in the Social Science category. That being the situation, the decisions of the Court ought not be read against him as no decision of the Court harms anybody (*actus curiae neminem gravabit*).

19. However, this Court finds itself in great constraint in overcoming the roadblock of the order having been passed against the petitioner in C.W.J.C. No. 9362 of 1999 whereby his prayer for grant of salary on a regular basis for his having worked against the sanctioned post till his superannuation, has been rejected.

20. This Court, therefore, deems it appropriate to dispose of this writ petition with a liberty to the petitioner to approach the Division Bench of this Court in appeal against the judgment and order passed in C.W.J.C. No. 5444 of 1996. The delay in doing so is self-explanatory and the



petitioner, therefore would have every right to seek
condonation of such delay in preferring such appeal.

21. The petition stands disposed of with aforesaid
observation.

(Ashutosh Kumar, J)

sunilkumar/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	24.11.2021
Transmission Date	N/A

