

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11230 of 2017

Indu Devi wife of Akhileshwar Kumar Verma @ Akhilesh Kumar Srivastava,
resident of Flat No. 38, Housing Colony, Prabhunath Nagar, P.S.- Muffasil,
District- Saran at Chhapra.

... .. Petitioner

Versus

1. The State Of Bihar and Ors
2. The Director, Higher Education, Education Department, Bihar, Patna.
3. The Chancellor of Universities, Bihar, Patna.
4. The Jai Prakash University, Chhapra, through its Registrar.
5. Vice Chancellor, Jai Prakash University, Chhapra.
6. Registrar, Jai Prakash University, Chhapra.
7. Jai Prakash Mahila College, Chhapra, through its Principal.
8. Principal, Jai Prakash Mahila College, Chhapra.

... .. Respondents

Appearance :

For the Petitioner	:	Mr.Anil Kumar
	:	Mr.Rajesh Kumar Singh
For the Respondents	:	Mr.Prabhakar Jha (GP 27) with
	:	Mr.Mukund Mohan Jha
For the University	:	Mr.Amit Srivastava with
	:	Mr.Ritesh Kumar

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 02-07-2021

This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. The petitioner claims to be the widow of Late Akhileshwar Kumar Verma @ Akhilesh Kumar Srivastava, who died on 12.04.2016 while serving as a Lab-boy in the Department of Chemistry at Jai Prakash Mahila College, Chapra, which is presently a constituent unit of Jai Prakash University, Chapra (hereinafter referred to as ‘the University’).



3. It is the petitioner's case that the deceased employee was engaged against a Class IV post in the College by the Principal of the College after inviting applications through notice, on the basis of recommendation of a duly constituted Selection Committee, on 25.07.1979. It is the specific case of the petitioner that a committee was constituted by the erstwhile University of Bihar, Muzaffarpur vide letter dated 04.06.1977 issued by the Registrar of the said University addressed to the Principal of the College, a copy of which has been brought on record by way of Annexure-1 to the writ application. The petitioner has relied on an Office Order dated 28.06.1977 issued by the erstwhile University of Bihar, Muzaffarpur (Annexure-2) whereby the Principals of the Colleges were authorized to make appointments against sanctioned Grade IV posts with the assistance of the Selection Committee duly approved by the University. The said Selection Committee constituted by the University headed by the Principal of the College had recommended the name of petitioner's husband for engagement on daily wage basis. A copy of the proceedings of the meeting of the Selection Committee dated 20.08.1978 has been brought on record by way of Annexure-4 to the writ application. It was mentioned in the said proceeding that till their services were sanctioned by the University, the persons selected shall get daily



wages. It is the petitioner's case that four other persons along with the petitioner's husband were selected and appointed. The petitioner is relying on a communication dated 25.09.1981 made by the Principal of the College addressed to the Vice-Chancellor of the erstwhile Bihar University, Muzaffarpur making a request for approval of services of petitioner's late husband and four other persons namely Shanti Kumari, Ashok Kumar, Sita Ram Prasad and Nagendra Prasad. It is also the petitioner's case that in the proforma for non-teaching employees of the constituent colleges under the jurisdiction of Bihar University, Muzaffarpur for consideration of the State Government also the name of petitioner's late husband had figured. Reliance has also been placed on a communication dated 28.09.1994 made by the Principal of the College addressed to the Registrar of Jai Prakash University, Chapra which came to be carved out from the erstwhile Bihar University, Muzaffarpur (Annexure-8) wherein it was mentioned that the petitioner's late husband was engaged on daily wage basis because there was no permanent post of Lab boy sanctioned. The petitioner's late husband and one Sita Ram Prasad were shown to have been working against Class IV post for nearly 14 years. The University was requested through a letter to take a decision for approval of appointment of one of them and for taking



steps for creation and sanction of another post, so that they may get pay-scale, as admissible to the post against which they were working. The petitioner's husband continued making representations for the regularisation of his services. The petitioner is relying on a notification dated 11.08.2010 issued by the University whereby it was notified that the services of such Grade III and Grade IV employees who were appointed till 11.12.1990 against sanctioned and vacant post shall be absorbed. In pursuance of the said decision, details in respect of the petitioner's husband were sought for by the University from the Principal of the College in order to take further action for approval of his services. The petitioner then relies on Annexure-17 to the writ application which is a letter dated 02.07.2011 written by the Principal of the College to the Registrar of the University stating therein that the petitioner's husband was the only employee who was absorbed against Grade IV post. The said decision to absorb was apparently taken in the light of the decision of the University, as contained in the notification dated 11.08.2010, according to the petitioner. Subsequently, when the allocation of fund was requested by the University from the concerned Department of the State Government for making payment to the employees whose services were regularised in the light of letter no. 1120 (R) dated



11.08.2010, list of employees were also enclosed with the said letter, in which, name of the petitioner's husband was mentioned as Akhilesh Kumar Srivastava in place of Akhileshwar Kumar Verma. By a notification issued vide Memo. No. 4003 (R) A dated 03.03.2012 under the signature of the Registrar of the University, the petitioner's service was absorbed in the college as Lab boy. It is the case of the petitioner thus that her deceased husband was a regular employee of the College when he died on 12.04.2016, in harness.

4. The petitioner is claiming, in the present writ application, payment of death-cum-retrial dues and other benefits consequent upon the death of her husband.

5. In the counter affidavit filed on behalf of the University, it has been specifically stated that the post against which the petitioner's husband was appointed, was neither created nor sanctioned/approved by the State Government nor the same was advertised by the University under the provisions of Article 3 Clause 5 of the University Statutes as contained in the Governor's Secretariat letter no. BSU 36/80-5270 GS (1) dated 18.11.1980. It has further been stated in the counter affidavit that the Principal of the College was not the Competent Authority for making appointment against Class IV post. In relation to the notifications



of the University issued by the then Registrar dated 11.08.2010 (supra) and 03.03.2012 (supra), it is the stand of the University that neither of the said notifications are in accordance with the aforesaid statute dated 18.11.1980, which were never approved by the State Government and it is accordingly the case of the University that the service of the petitioner's late husband cannot be said to be regularised.

6. A rejoinder affidavit has been filed on behalf of the petitioner to the counter affidavit filed on behalf of the State of Bihar bringing on record judgment and order of this Court dated 19.05.2000 rendered in C.W.J.C. No. 882 of 1998 and another analogous matter which was preferred by Ashok Kumar who was appointed through the same process of selection through which the petitioner was engaged on a daily wage basis on 25.07.1979. He had sought for a direction for regularization/absorption of his service against the post against which he was appointed. The question of legality of appointment of said Ashok Kumar was raised by the University before this Court in the said case. The Court after considering in detail recorded in paragraphs 23 and 24 as under:-

“23. Petitioner Ashok Kumar was appointed after due advertisement published in 1978 and on the recommendation of a Selection



Committee made on 20th August, 1978, as a Typist on 25th July, 1979 will be evident from Annexure-2. Such appointment was made by Principal, J.P. Mahila College, Chapra in exercise of power delegated to him vide memo dated 28th June, 1977, which will be also evident from his letter of appointment issued on 25th July, 1979 (Annexure-3). The said letter of appointment clearly shows that at the time, the order of appointment was issued, the other order dated 28th June, 1979 withdrawing the delegation of power had not been served on the College authorities.

24. The University had knowledge that the appointments of petitioner Ashok Kumar and others were made in exigency of work, by stop gap arrangement, after due advertisement and recommendation of Selection Committee, will be evident from letter no. 3007 dated 9th April, 1981 (Annexure-6) written by Principal to the University, wherein the name of the petitioner was shown having been appointed as Typist. The Vice-Chancellor of Bihar University had also knowledge of such appointment of petitioner Ashok Kumar will be evident from letter no. 3280 dated 25th September, 1981; letter dated 27th August, 1984 and the University report dated 8th July, 1985 (Annexure-12) Thus, so far as it relates to petitioner Ashok



Kumar (of C.W.J.C. No. 882/98), his appointment cannot be held to be in violating of Articles 14 and 16 of Constitution of India, nor can be stated to be void.”

7. The Court, in case of Ashok Kumar v. The State of Bihar & Others finally held in paragraphs 32 to 34 as under:-

“32. The petitioners having appointed after local advertisement; on the recommendation of a Selection Committee; having worked for more than 18 to 23 years; the University having knowledge of the same for last more than 15 years, now it is not open to the to them to raise the question of legality and propriety of their initial engagement, for the purpose of consideration of their cases for ‘regular appointment’ by way of regularization/absorption.

33. In the result, the both the writ petitions succeeds. The respondents are directed to consider the cases of the petitioners and other similarly situated persons for regularisation of their services/absorption i.e. for regular appointment, against the post they are performing duties and decision be taken and communicated to the petitioners within a period of three months from the



date of receipt/production of a copy of this order.

34. If the services of one or other petitioner is regularised/absorb/appointed on regular basis, the respondents will be liable to pay their salary within three months thereof."

8. Relying on the said decision in case of **Ashok Kumar** (supra), it is the petitioner's case in the rejoinder affidavit that after taking into account and discussing every aspect of the matter, this Court in case of **Ashok Kumar** (supra) had directed for considering the case of the petitioner of that case and other similarly situated persons for regularization against the post against which they were performing duties. In the light of the said decision in case of **Ashok Kumar** (supra) his service was regularized and, therefore, the validity of engagement of the petitioner pursuant to recommendation of the Selection Committee dated 20.08.1978 cannot now be questioned by the University. It is further case of the petitioner that Governor's Secretariat letter dated 18.11.1980 has no application in the facts and circumstances of the present case, as late husband of the petitioner was appointed against a duly advertised post by the College in pursuance of delegation of power by the University as contained in the letter dated 28.06.1977, a copy of which has



already been brought on record by way of Annexure-2 to the writ application. In relation to the Governor's Secretariat letter dated 18.11.1980, it is the petitioner's contention that Articles 3 Clause 5 of the same are applicable to superior service of the University within the meaning of Article 2 Clause XV of the University Statutes, as contained in the said letter. It is the petitioner's case that the stand of the University that notifications dated 11.08.2010 (supra) and 03.03.2012 (supra) issued by the same University are not in accordance with the aforesaid statutes and have not been approved the State Government, cannot be accepted since the same is not applicable in case of late husband of the petitioner, who was in inferior service within the meaning of Article 2 Clause (4) of the said Statute.

9. In the rejoinder affidavit, the petitioner has relied on a letter dated 29.09.2011 bearing letter no. 3502 (R) communicated by the University whereby the then Department of Human Resource Development (Higher Education), Bihar was informed that in compliance of the judgment passed by the Supreme Court and this Court daily wage Group C and Group D employees of constituent colleges appointed prior to 11.12.1990 have been regularised vide notification, as contained in memo no. 1120 (R) dated 11.08.2010. With reference to the said letter, the



petitioner contends that the stand taken by the University in its counter affidavit is untenable.

10. The University has filed a supplementary counter affidavit wherein a plea has been taken that if the service of the husband of the petitioner was to be regularized in terms of decision of this Court in case of *Ashok Kumar* (supra) then how come the petitioner is claiming the regularisation on the strength of notifications dated 11.08.2010 (supra) and 03.03.2012 (supra), validity of which is under cloud, as the same were not issued in terms of the statutory provisions. It has further been stated that the fact that the petitioner's husband did not take any step for the implementation of the order of this Court in case of *Ashok Kumar* (supra) for his regularization shows that the said order did not cover the petitioner's case. The University is then relying on orders passed by this Court dated 21.06.2018 and 17.02.2018 in C.W.J.C. No. 2780 of 2017 and C.W.J.C. No. 19337 of 2016 whereby this Court declined to entertain a case of regularisation of service and payment of pensionary benefits etc.

11. Yet another affidavit has been filed on behalf of the University stating therein that the claim of the petitioner that her husband was appointed on 20.08.1978 has been verified by the University and it has been found that neither any such



appointment letter was issued by the College nor the so-called appointment was ever approved by the erstwhile Bihar University nor the husband of the petitioner continued in service by the order of the University. It is accordingly the case of the University that the petitioner's case is not covered by the decision rendered in case of *Ashok Kumar* (supra).

12. A second rejoinder has been filed on behalf of the petitioner to controvert the stand taken on behalf of the University reiterating the plea that he was appointed in the same selection process, in which, the said Ashok Kumar was appointed.

13. Mr. Anil Kumar, learned counsel appearing on behalf of the petitioner has argued that plenty of documents have been brought on record to demonstrate that the petitioner's husband was found to be working in the College after his selection by a Selection Committee in its meeting held on 20.08.1978. He has submitted that case of the petitioner of C.W.J.C. No. 19337 of 2016 was different from that of the husband of this petitioner. The petitioner of the said C.W.J.C. No 19337 of 2016 was found to be appointed against a non-existent post and later he was adjusted to a different post which was found to be illegal whereas the petitioner was appointed against a vacant and sanctioned post after following the due process of law in accordance with the provision



contained under Bihar State Universities Act. He has further submitted that the documents reveal that the petitioner was working against a post which was duly advertised, since 1979.

14. Mr. Amit Srivastava assisted by Mr. Ritesh Kumar, learned counsel representing the University have vehemently opposed the relief sought for by the petitioner on the ground that on verification, the petitioner's late husband has not been found to have been validly appointed inasmuch as no appointment letter is available with the University. It has further been argued that in any case the petitioner's husband was not appointed against duly created sanctioned vacant post and, therefore, the claim of the petitioner for pension after regularisation is unsustainable.

15. There are certain basic facts which are in dispute, the first and foremost being, as to whether the petitioner's husband had participated in a process of selection held by a Selection Committee pursuant to which said Ashok Kumar was appointed. Though there is statement in the supplementary counter affidavit filed on behalf of the University that there is no letter of appointment issued in favour of the petitioner's husband available in the College or the University, there is no specific averment that the petitioner's husband was not selected in the same process of



selection in which said Ashok Kumar was appointed. As has been noted above, this Court in case of *Ashok Kumar* (supra) has recorded specific finding in relation to validity of the procedure adopted for his selection and appointment. If the records of the petitioner are not available, whether records of said Ashok Kumar are available or not is a question which needs to be gone into before determining the petitioner's claim, either way. The second question which arises is, as to whether the engagement of petitioner's husband in 1979 was against a duly created sanctioned vacant post or not. As has been noticed hereinabove there are several documents to demonstrate that one Akhileshwar Kumar Verma had been working in the college on daily wage basis. Before addressing the question, as to whether the petitioner's husband was engaged against duly created and sanctioned post, one will have to give due regard to the full Bench decision of this Court in case of *Braj Kishore Singh v. The State of Bihar* reported in **1997 (1) P.L.J.R. 509**. The Full Bench had the occasion to deal with the effect of staffing pattern regarding non-teaching posts in the Colleges, the Court recorded in paragraphs 21 to 24 as under:-

“21. The point for consideration then is whether appointments made by the College/University authorities against sanctioned posts, that is, posts within the



staffing pattern are to be accepted as final. As noticed above, Section 35 of the Universities Act provides for prior approval both in the matter of creation of posts as also in the matter of appointment. Creation of post is the earlier stage, actual appointment comes next. As noticed above, there cannot be a College without the teachers and without teachers the College cannot be granted affiliation. The relevant part of Section 35 requiring prior approval in the matter of appointment has to be read down to include 'post facto' approval otherwise the provision may become unworkable and lead to anomalous or absurd situations. One of the objects underlying Section 35 is that appointments are made of persons possessing necessary eligibility and qualifications and in accordance with law. This object can be achieved even without insistence on 'prior approval' in each and every case. In appropriate cases, appointment can be made subject to 'post facto' approval of that State Government after such scrutiny of the qualifications and the recruitment process as may be necessary and appropriate. Such appointments, made by the College/University authorities, should not be treated as final, they shall have legal effect and sanctity only after approval of the State Government.



22. *The above discussion may be summed up in these words. By reason of the approval of the staffing pattern proposed by the Bihar Inter University Board, non-teaching class III and IV posts will be deemed to have been created with the prior approval of the State Government i.e. sanctioned. Appointment can be made against those posts in accordance with the staffing pattern without seeking further approval regarding post (s). Merely on the ground that prior approval of the State Government was not obtained, the appointment cannot be said to be illegal. The College/University authorities are competent to make appointment of eligible and suitable persons against such posts. Ordinarily, this should be done with the prior approval of the State Government. In exceptional cases, in exigency of service of situation, provisional appointment can be made subject to approval of the State Government within the stipulated time-frame. It is open to the State Government to examine the eligibility and suitability of even those who have already been appointed against the sanctioned posts as per the staffing pattern.*

23. *The view that I have taken above is somewhat at tangent with the express provisions of Section 35 of the Universities Act. But as I have pointed*



out above, if the provisions are literally construed, it may result into an absurd situation and may also make the provisions unworkable rendering them vulnerable to challenge on the ground of arbitrariness. No guidelines have been laid down and absolute discretion has been conferred on the State Government. As rightly contended at the Bar when power is conferred on an authority to do certain thing, the authority is obliged to exercise that power one way or the other. Conferment of power is coupled with obligation to exercise the power. In order to sustain the provisions, so that the objects underlying the same are achieved, it becomes necessary to interpret the provisions in the manner indicated above by reading them down. Reading down of the provisions of an Act is a settled Principle of interpretation to sustain its validity, as well as for effectuation of the purpose of the statute. The Court though have no power to amend the law by process of interpretation, they do have the power to mend it so as to be in conformity with the intendment of legislature. As has been observed in Delhi Transport Corporation v. DTC Mazdoor Congress, AIR 1991 SC 101, the doctrine of reading down or of recasting the statute can be applied for saving a statute from being struck down on account of any unconstitutionality or on the ground of vagueness or ambiguity



where it is possible to gather the intention of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made.

24. In Pannalal Banshilal Pitti v. State of Andhra Pradesh, 1996 (2) SCC 498, certain provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 providing for appointment of Board of Trustees, and management by the executive officer appointed by the State Government or the Commissioner/Deputy

Commissioner/Assistant Commissioner came up under challenge on the ground of violation of Article 25 of the Constitution. The impugned provisions had been made on the recommendation of the Challa Kondaiah Commission which indicated large scale mis-management and mis-utilisation of funds of Charitable and Hindu religious institutions and endowments. The Supreme Court observed that it would not be proper to interfere with the legislative wisdom. But taking into consideration the fact that the freedom of religion was as much applicable to the majority Hindu as to the minority and that the charitable and religious institutions and endowments owe their very existence to the founder or members of his family, it held that it would be in



the interest of religious institutions and endowments and also in keeping with the wishes of the founder that he i.e. founder or member of the family is given the primacy in the management. The Court observed, "with a view, therefore, to effectuate the object of the religious institutions or endowment or specific endowment and to encourage establishment of such institutions in future, making the founder or in his absence a member of his family to be chairperson and to accord him a major say in the management and governance would be salutary and effective." The Supreme Court, accordingly while upholding the abolition of hereditary right, further upheld the validity of the impugned provisions regarding management of the religious institutions and endowments by a Board of Trustees appointed by the State Government or its officials, as the case may be, "headed either by the founder or the member of his family", by reading down the provisions in that manner."

16. In no uncertain terms, the Full Bench of this Court in case of ***Braj Kishore Singh*** (supra) held that by reason of the approval of staffing pattern proposed by the Inter-University Board, non-teaching Class III and Class IV posts shall be “deemed to have been created” with the prior approval of the State



Government i.e. sanctioned. The Court categorically held that appointments can be made against these posts in accordance with the staffing pattern without seeking further approval regarding the posts. The Court held that merely on the ground that prior approval of the State Government was not obtained, the appointment cannot be said to be illegal.

17. From the pleadings brought on record on behalf of the University, it appears that they themselves are not sure about their stand. In paragraph 14 of the supplementary counter affidavit, they state the fact that the petitioner did not take steps for implementation of the order of this Court in case of **Ashok Kumar** (supra) shows that the said order does not cover the case of the petitioner. The University, which is state within the meaning of Article 12 of the Constitution of India, instead of taking such a vague plea in their counter affidavit ought to have come with specific case to distinguish the petitioner's case with that of said Ashok Kumar in the matter of process of selection and engagement and status of the post stating, as to whether the same was sanctioned vacant or not at the time of their appointment.

18. There is another factual aspect of the matter apropos about which there is no clarity in the pleadings. The petitioner claims that her husband was engaged as a Lab boy on



25.07.1979. The documents which have been brought on record also indicate that he was engaged with effect from 25.07.1979. The selection was made in the year 1978. The said Ashok Kumar was also appointed on 25.07.1979 on the basis of recommendation of the Selection Committee held on 20.08.1978. In paragraph 5 of the reply of the University, it has been stated that the claim of the petitioner that her husband was appointed on 20.08.1978 has been verified by the University and it has been found that neither the appointment letter of the husband of the petitioner was ever issued by the college nor the so-called appointment was approved by the erstwhile Bihar University. It is not the claim of the petitioner that her husband was appointed on 20.08.1978 rather it is her specific claim that he was appointed on 25.07.1979. This casual approach of the Officers of the University in filing pleadings before this Court is highly deplorable. Instead of coming out with specific consistent case, the University, in order to defend its action has filed pleadings after pleadings taking different stand which has unnecessarily complicated a plain and simple issue of the petitioner's claim, as to whether her husband was engaged on 25.07.1979 or not and his engagement was against vacant sanctioned post after following due procedure and whether for his engagement same procedure was followed as in case of *Ashok Kumar* (supra) or not.



19. On the basis of pleadings on record, it is difficult for this Court exercising jurisdiction under Article 226 of the Constitution of India to record specific finding, as to whether the petitioner's case is covered by the decision of this Court in case of **Ashok Kumar** (supra) or not.

20. Considering facts and circumstances of the matter, this writ application is disposed of with a direction to the Vice Chancellor of Jai Prakash University, Chapra to examine himself and record his specific finding by passing a speaking order, as to whether the petitioner's case is covered by the decision of this Court in case of **Ashok Kumar** (supra) or not. For the said purpose, he will have to record similarities/dissimilarities in the case of the petitioner and that of **Ashok Kumar** (supra). Once in case he comes to a conclusion that the manner of engagement of the petitioner's husband was same as that of Ashok Kumar, no question of procedural irregularity in appointment of the petitioner's husband shall be raised. In such circumstance, he will be obliged to examine, as to whether his engagement was against a duly created, vacant and sanctioned post.

21. In case, it is found that the petitioner's husband was engaged against a duly created sanctioned post taking into account the applicability or otherwise of the staffing pattern in the



light of full Bench decision in case of ***Braj Kishore Singh*** (supra), the Vice Chancellor shall take a final decision on the petitioner's claim for regularisation of services of the petitioner's husband and her claim for pensionary and other benefits.

22. Such order must be passed within three months from the date of receipt/production of a copy of this order. The Court expects the Vice Chancellor to examine thoroughly the points taken on behalf of the petitioner, which has been noted above while taking final decision. The order passed by the Vice Chancellor shall be communicated to the petitioner soon thereafter.

23. It goes without saying that the petitioner shall have the liberty to question the correctness of the order of the Vice Chancellor before appropriate forum in accordance with law.

24. This application stands disposed of accordingly with the aforesaid observation and directions.

(Chakradhari Sharan Singh, J)

AKASH/-

AFR/NAFR	N/A
CAV DATE	N/A
Uploading Date	20.07.2021
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