

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19296 of 2019

Shiv Shankar Choudhary, son of Late Ram Prasad Choudhary, Resident of village and P.O. - Paghari, P.S.- Baheri, District- Darbhanga, Pin- 847105 at present working as Librarian, C.M. Science College, Darbhanga, a constituted college under L.N. Mithila University, Darbhanga.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Additional Secretary, Higher Education Department, Govt. of Bihar, Vikas Bhawan (New Secretariat) Patna.
4. Lalit Narayan Mithila University, Kameshwar Nagar Darbhanga, Bihar- 846004.
5. The Vice Chancellor, Lalit Narayan Mithila University, Kameshwar Nagar Darbhanga, Bihar- 846004.
6. The Registrar, Lalit Narayan Mithila University, Kameshwar Nagar Darbhanga, Bihar- 846004.
7. The Principal, C.M. Science College, Darbhanga Bihar- 846004.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Binod Kumar Labh, Advocate Mr. Shyama Kant Singh, Advocate Mr. Ajit Kumar, Advocate Mr. Gajendra Kumar Singh, Advocate
For the Respondent State:		Mr. Madanjeet Kumar, GP-20
For the Respondent University :		Mr. Ajay Behari Sinha, Senior Advocate Mr. Md. Nadim Seraj, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 21-08-2021

By a letter dated 12.02.1986 addressed to the petitioner by the Principal, M.K.College, Laheriasarai, the petitioner was appointed as sorter in the Library of the College on casual basis on payment of Rs.12.50 per day. There was no process of selection conforming requirements of Articles 14 and 16 of the Constitution of India undertaken before the said engagement. The College is a



constituted unit of the said University. The post of sorter in the Library was not sanctioned. The petitioner joined the said post on the very next date i.e. on 13.02.1986.

2. It is the petitioner's case that the Principal of the College had intimated the University about the petitioner's engagement in the College through letter dated 21.01.1994 issued under the signature of the Principal of the College. The Principal also informed through the letter that post of Librarian was vacant in the College. In response to the said letter dated 21.01.1994, the Registrar of the University addressed a letter dated 29.01.1994 to the Principal mentioning that the petitioner should be allowed to continue against the post and that he would be entitled to payment on revised rate of 'daily wage'. The letter dated 29.01.1994 goes to suggest that as on said date, the petitioner was working on daily wage basis in the College.

3. It is the petitioner's case that he had approached this Court by filing writ petition for regularisation of his service, which had given rise to C.W.J.C. No. 8734 of 1995 and was allowed with a direction '... If there is no post of sorter available other than one sanctioned post, the authorities may write to the State Government for creation of another post of sorter for accommodating the



petitioner, since the petitioner is working on the post since 1986 on *ad hoc* basis ...’.

4. It appears from a communication dated 28.08.1998 that one Smt. Sanju Choudhary was working against the sanctioned post of sorter in the College, who was to be shifted to D.V.K.N. College, Narhan, Samastipur, another constituent unit of the University. So as to comply with the order of this Court passed in C.W.J.C. No. 8734 of 1995, the Additional Secretary, Higher Education Department, Government of Bihar, requested the Registrar of the University to adjust the petitioner against the post of sorter falling vacant because of transfer of Smt. Sanju Choudhary. The letter dated 28.08.1998 clarifies that till said date, the post of sorter in the College was not vacant. Subsequently, the University came out with a notification dated 29.10.1998 issued in the light of the order of this Court passed in C.W.J.C. No. 8734 of 1995 and the direction of the Additional Secretary to the Government of Bihar vide letter dated 28.08.1998 regularizing the services of the petitioner against sanctioned post of sorter, i.e., ‘the post held by Smt. Sanju Choudhary at M.K. College, Laheriasarai’ in the prescribed scale of pay with effect from the date of order dated 17.10.1998. The petitioner accepted the said order, as contained in the notification dated 29.10.1998, without raising any



objection over the date, i.e., 17.08.1998, with effect from which, his services were regularized. Nearly two decades thereafter, he approached this Court by filing a writ petition, giving rise to C.W.J.C. No. 14139 of 2018, claiming that his initial date of appointment ought to have been treated as 13.02.1986, when he was appointed on daily-wage basis. Without going into the merits of the petitioner's claim, a coordinate Bench of this Court disposed of the said writ application in view of submissions made on behalf of the petitioner that the petitioner would be satisfied if he was permitted to file a representation regarding his grievance mentioned in the writ petition before the Registrar of the University. In compliance of this Court's order, the petitioner was permitted to file a representation and respondent No. 6 was directed to dispose of the representation by reasoned and speaking order within a period of 12 weeks thereafter. In compliance of this Court's order, a reasoned order has been passed by the Registrar of the University rejecting the petitioner's claim for shifting back of the date of his regularisation, by an order dated 23.07.2019, communicated to the petitioner through letter dated 09.08.2019, which is under challenge in the present writ application. The petitioner is also seeking a direction to the respondents to provide



all consequential benefits treating his initial date of appointment as 13.02.1986.

5. A counter affidavit has been filed on behalf of the University stating therein that the petitioner's service was regularized with effect from 17.10.1998 prior to which he was working against a non-sanctioned post and, therefore, his claim for shifting back initial date of his regularisation is untenable. It has further been stated that the Principal of the College was not competent to make an appointment against the post of sorter and no selection process at all was followed. Further, in the year 1994, the University had allowed the petitioner to work against the post of sorter in the College subject to the condition that his wages would be paid from the College fund. In the light of the order of this Court passed in C.W.J.C. No. 8734 of 1995, the University had written to the State Government for creation of one additional post of sorter in the College, in response to which, the State Government had in its letter dated 26.06.1998 suggested transfer of Smt. Sanju Choudhary to D.B.K.N. College, Narhan, Samastipur, and adjustment of the petitioner against vacancy created by transfer of Smt. Sanju Choudhary. After transfer of said Sanju Choudhary, the service of the petitioner was regularized



against sanctioned vacant post of sorter with effect from 17.10.1998.

6. In the rejoinder filed on behalf of the petitioner to the counter affidavit, the petitioner has not disputed the facts asserted in the counter affidavit. Reliance has, however, been placed on Supreme Court's decision in case of *The Direct Recruit Class-II Engineering Officers' Association and Others v. State of Maharashtra* (AIR 1990 SC 1607) to submit that once services of the petitioner have been regularized, he is entitled for all consequential benefits from the date of his initial engagement. This is to be noted that it has been stated in the counter affidavit that benefits of Assured Career Progression and Modified Assured Career Progression have been granted to the petitioner treating his regular service from 17.10.1998. In the rejoinder affidavit, however, it has been stated that no benefit of ACP and MACP has been given to the petitioner. The petitioner claims that he is entitled to first time bound promotion after ten years on 15.02.1996 counting his service on 13.02.1986. He also claims fixation of pay scale with effect from 13.02.1986 and consequential benefits after such regularisation.

7. Mr. Ajit Kumar, learned counsel appearing on behalf of the petitioner has submitted that the respondents cannot take



plea of absence of sanctioned post on the date of petitioner's engagement on daily wages basis with effect from 13.02.1986 after regularisation of his service. He has further submitted that in any case, there is no requirement of specific sanction of a post in an affiliated college to satisfy the requirement of Section 35 of the Bihar State Universities Act, 1976, in view of the Full Bench decision of this Court in case of ***Braj Kishore Singh and Others vs. The State of Bihar and Others***, reported in **1997(1) 509 (FB)**. He has submitted, referring to the said decision that prior approval of the State Government in the matter of creation of post is not required once a post falls within the framework of the staffing pattern. He has contended, referring to the decision in case of ***The Direct Recruit Class-II Engineering Officers' Association*** (supra) that even if the initial appointment is treated not to have been made according to the Rules, since the petitioner was allowed to continue in service uninterruptedly for long period till regularisation of his service, the entire period needs to be treated as period spent in service for the purpose of consequential benefits.

8. Mr. Ajay Behari Sinha, learned Senior Counsel appearing on behalf of the University, on the other hand, has defended the impugned order with the submission that in the



absence of any case made out by the petitioner that the post against which the petitioner was appointed was to be treated to be sanctioned even within the frame work of staffing pattern, the petitioner cannot claim regularisation with effect from initial date of his appointment. He has also submitted that in compliance of this Court's order, the Registrar of the University has passed speaking and reasoned order rejecting the petitioner's claim of his regular served from the date of his engagement on daily wage basis, which is just and proper.

9. I have perused the pleadings on record and I have considered rival submissions advanced on behalf of the parties. The petitioner does not dispute the fact that he was engaged on daily wage basis as sorter on 13.02.1986. No post of sorter in the Library was sanctioned. It is nowhere pleaded in the writ application that second post of sorter in the Library was within the framework of the staffing pattern for bringing his case within the ambit of law laid down by a Full Bench of this Court in case of ***Braj Kishore Singh*** (supra). In case of ***Braj Kishore Singh*** (supra), the Full Bench, while interpreting Section 35 of the Act, laid down the law in paragraph 27 and 28 as under : -

“27. In the present case also, in view of the inherent ‘unworkability’ of the impugned provisions regarding prior approval of the



State Government the provisions can be read down in the manner indicated above. The soul of the provisions is not violated and the purpose is also achieved. The purpose in making these provisions is to pre-empt illegal and uncalled for appointments. Large scale illegal appointments without availability of posts have been made in different establishments/organisations in this State in recent time and the legislature thought it appropriate to intervene and make the provisions which would deter the College/University authorities from making illegal appointments because, more often than not, it is the state which has to bear the financial burden of the appointments. The purpose underlying the provisions, therefore, has not only to be lauded but also achieved. If Section 35 is interpreted in the manner indicated above, not only the provisions would be substantially complied with but the purpose also would be fulfilled.

28. Once staffing pattern is prescribed/laid down it would be unreasonable to insist on prior approval of the State Government in the matter of creation of posts within the frame-work of the staffing pattern. And so far as the question of approval of the appointment made against those posts is concerned, if the power of the State



Government to scrutinise the eligibility or suitability of the candidates appointed or proposed to be appointed or the validity of the selection process is reserved to it, the State Government can, even after the appointments have been made, decide not to approve them. I should not be interpreted to mean that the term 'prior approval' in Section 35 in the matter of appointment should be read as 'post facto' approval. As a general rule, after completing the selection process the University/College authorities should seek approval of the State Government before its decisions are given effect to and actual appointments are made. There, however, may be situations where it may not be expedient to seek prior approval. I have cited example of a newly established college which cannot seek affiliation unless it has teachers and staff on its rolls to cater to the academic needs of the students. There may be other situations which, if not equally compelling, may justify appointment without prior approval. It should be kept in mind that even in terms of proviso to sub-section (2) of Section 35 it is open to the University/College to make temporary appointments against sanctioned posts for a period not exceeding six months."



10. After having held as above, the Court in case of ***Braj Kishore Singh*** (supra), held that if the appointments are made against posts as per the staffing pattern, i.e. within the sanctioned strength, they cannot be said to be violative of Section 35 of the Act and illegal on the ground that the posts have not been sanctioned by the State Government provided, of course, the candidates possess the eligibility and suitability and the selection/appointment process was in conformity with Articles 14 and 16 of the Constitution. The Full Bench of this Court in case of ***Braj Kishore Singh*** (supra) concluded in paragraph 34 as under : -

“34. In the above premises, the judgment of the learned Single Judge rejecting the claim of the appellants on the ground that they were appointed without prior approval of the State Government as contemplated under Section 35 of the Act cannot be sustained. In the ordinary course, in view of my conclusion that it is open to the State Government to consider the validity of appointments already made for the purpose of granting or refusing post facto approval, I would have considered asking the State Government to look into the claim of the appellants afresh. However, having regard to the fact that the appellants have continued in service for more than 17 years, I do not think it would be appropriate exercise of



discretion to re-open the matter after such a long lapse of time. In Direct Recruit Class-II Engineering Officers Association v. The State of Maharashtra, AIR 1990 Supreme Court 1607 a Constitution Bench of the Apex Court has held that where initial appointment is not made according to the rules but the appointee continues in service uninterruptedly for long period till regularisation of his service, the entire period as the period spent in service for the purpose of consequential benefits will be counted. The appellants are accordingly entitled to have their services regularised against the posts within the staffing pattern as applicable to the College.”

11. In my opinion, the Full Bench decision of this Court in case of ***Braj Kishore Singh*** (supra), which has taken note of the Supreme Court’s decision in case of ***The Direct Recruit Class-II Engineering Officers’ Association*** (supra), does not come in aid of the petitioner in view of unambiguous observation that the appellants of the said case were held entitled to have their service regularised against the posts within the staffing pattern as applicable to the College.

12. Applying the law laid down in case of ***Braj Kishore Singh*** (supra), I have no hesitation in reaching a conclusion that the petitioner’s initial engagement itself was violative of Section



35 of the Act as the same was not made against a post as per the staffing pattern of the College. Admittedly, no selection/appointment process was undertaken in conformity with the Articles 14 and 16 of the Constitution. The specific case of the respondent Universities that the Principal of the College did not have the competence to make appointment against the post of sorter has not been disputed by the petitioner.

13. Further, the petitioner had accepted his regularisation with effect from 17.10.1998 without raising any grievance against such decision, soon thereafter. For the first time, he raised a grievance against regularisation in 2018 by filing a writ application before this Court.

14. The claim of the petitioner that he should be given fixation of pay-scale with effect from 13.02.1986 when he was engaged on daily wages basis and consequential benefits after regularisation and time bound promotion after completion of ten years with effect from 13.02.1996 is wholly misconceived. It is absurd on the part of the petitioner to claim fixation of pay for the period during which he was working on daily wage basis against an unsanctioned post.

15. This writ application is completely devoid of merit and is accordingly dismissed.



16. There shall, however, be no order as to cost.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	24.08.2021.
Transmission Date	N/A

