

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1238 of 2018

In

Civil Writ Jurisdiction Case No.15418 of 2011

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1. Kameshwar Singh Darbhanga Sanskrit University and Ors
 2. The Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
 3. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
 4. The Finance Advisor, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
 5. The Finance Officer, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.

... .. Appellant/s

Versus

1. Rati Kant Mishra and Ors S/o Late Fuchan Mishra, Resident of Roshera, P.S.- Roshera, District- Samastipur.
2. The State of Bihar.
3. The Principal Secretary, Higher Education Department, New Secretariat, Patna.
4. The Director, Higher Education Department, New Secretariat, Patna.
5. The Chairman, Sanskrit College, Roshera, Samastipur.
6. The Secretary, Governing Body, Sanskrit College, Roshera, Samastipur.
7. The Principal, Sanskrit College, Roshera, Samastipur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Gyanand Roy, Advocate

For the Respondent/s : Mr. Shashi Shekhar Tiwari, AC to AAG 13

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 28-07-2022



Heard I.A. No. 7756 of 2018 for condonation of delay of 39 days. For the reasons stated in the application and affidavit, I.A. stands allowed.

2. In the instant appeal, appellant – University has questioned the validity of learned Single Judge’s order dated 19.06.2018 passed in C.W.J.C. No. 15418 of 2011.

3. Respondent – *Rati Kant Mishra* filed a petition in respect of payment of arrears of salary with reference to his initial appointment on 17.07.1979 till the year 2011, the date on which writ petition was filed. In the meanwhile his services were terminated on 17.01.2004 and it was set aside by the Chancellor on 18.01.2005 with certain direction to the appellant – University. In this backdrop, the appellants’ counsel is not aware as to what has happened or transpired pursuant to the Chancellor order dated 18.01.2005. In the light of these facts and circumstances, the learned counsel for the appellants submitted that respondent - *Rati Kant Mishra* has not been paid salary on the score that his appointment was not against sanctioned post and further State Government is not providing financial aid to the University in order to redress the grievance of the respondent - *Rati Kant Mishra*.

4. Heard learned counsel for the appellant.



5. Undisputed facts are that the respondent – *Rati Kant Mishra* was appointed on 17.07.1979. His services was terminated on 17.01.2004 on the score that his initial appointment was irregular and it was set aside on 18.01.2005 and remanded the matter to the University. Decision taken by the University is not forthcoming and so also it was not apprised before the learned Single Judge as on 19.06.2018.

6. The respondent – *Rati Kant Mishra* is entitled to salary for the reasons that the appellant–University have extracted work from him during the period from the year 1979 till the year 2011. Apex Court in the cases of *State of Punjab and Others vs. Jagjit Singh and Others* reported in (2017) 1 SCC 148 and *Man Singh vs. The State of Uttar Pradesh Through Secretary & Ors.*, 2022 LiveLaw (SC) 341 held that even a temporary employee is entitled to minimum pay of pay scale attached to the post. Further if the initial appointment is irregular, even in such circumstances having regard to the fact that work has been extracted, the concerned employee is entitled to salary attached to the post. In the light of the decision passed by the Apex Court in the judgment stated *supra*, respondent - *Rati Kant Mishra* is entitled to salary, therefore, the appellant – University have not



made out a *prima facie* case so as to interfere with the order dated 19.06.2018 passed in C.W.J.C. No. 15418 of 2011.

7. Accordingly, appeal stands dismissed

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

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CAV DATE	
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