

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1280 of 2018

In

Civil Writ Jurisdiction Case No.1360 of 2015

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Parmeshwar Sharma Son of late Bisho Mistri, Resident of Mohalla-
Hasanchak, Post-Lalbagh, Police Station-Town Darbhanga, Distirct-
Darbhanga.

... .. Appellant/s

Versus

1. The State Of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. The Vice-Chancellor, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga.
3. The Registrar, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga.
4. Head of the Department, P.G. in Chemistry, Lalit Narayan Mithila Univ., Kameshwar Nagar, Darbhanga.
5. The Finance Officer, Lalit Narayan Mithila Univ., Kameshwar Nagar, Darbhanga.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Suryakant Kumar
For the Respondent/s : Mr.Md. Nadim Seraj

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CORAM: HONOURABLE MR. JUSTICE RAJAN GUPTA

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJAN GUPTA)

Date : 13-04-2022

The present appeal is directed against the order dated 6.8.2018 passed in CWJC No. 1360 of 2015 whereby and whereunder the writ petition has stood dismissed.



The appellant herein had filed a writ petition, interalia praying therein to direct the respondents to regularize the services of the petitioner as Laboratory Incharge and make payment of the arrears of salary accordingly. The appellant herein is stated to have been appointed as Laboratory Incharge in the Department of Chemistry, Lalit Narayan Mithila University, Darbhanga, on honourary basis in the year, 1985, whereafter he continued to work on the post of Laboratory Incharge, but was never paid any remuneration.

The learned counsel for the appellant has relied upon paragraph no. 7 of the counter affidavit filed on behalf of the Respondents no. 2 to 5 in the aforesaid writ petition bearing CWJC No. 1360 of 2015, which is reproduced hereinbelow:-

"That in reply to the statements made in paragraph no. 10 of the writ petition, it is pertinent to mention that after abolition of post of Demonstrator on 18/9/1975 by the State Government and U.G.C., the post of Lab Incharge in different subjects were recommended



to the State Government so that Laboratory work of the department may not suffer. Accordingly temporary appointment were made by the College under the instruction of the University after proper advertisement and interview. However, their payment of salary was started only after different orders of the Hon'ble Court. The case of the petitioner is not as such and as such he has tried to mislead by making distorted facts before the Hon'ble Court.

The learned counsel for the appellant has referred to the aforesaid paragraph no. 7 of the counter affidavit to contend that though it has been stated that temporary appointments were made by the College under the instruction of the University after proper advertisement and interview, subsequent to abolition of the post of Demonstrator on 18.9.1975 so that the laboratory work of the Department may not suffer, but still the services of the appellant herein has not been regularized.

Per contra, the learned counsel for the



Respondent-University has submitted that the appellant herein was never appointed by any order of the Vice-Chancellor of the University rather the engagement of the appellant was made by the Head of the Department, who does not possess any power / authority to appoint / engage any person in the services of the University. It is also submitted that not even a single chit of paper is available on record to show that the appellant was appointed by the University, hence, there is no question of regularization of the services of the appellant. It is also submitted that the contention of the appellant that he is working as a Laboratory Incharge is also not correct inasmuch as he is neither working nor is being paid any salary / honourarium. Lastly, It is submitted that as per Clause 35(3) of the Bihar State University Act, 1976, as amended upto date, any appointment or promotion made contrary to the provisions of the Act or statutes, or Rules or Regulations made thereunder or made in irregular or unauthorized manner shall be invalid and shall be terminated at



any time.

We have heard the learned counsel for the parties and perused the materials on record. At the outset, we had put a query to the learned counsel for the appellant to show that the appellant herein had been appointed by the University and that too, after issuance of proper advertisement and resorting to proper selection process as per the rules and regulations in force, however, the learned counsel for the appellant has been unable to show the same. We also find that there is no material on record to show that the appellant was ever appointed by the Respondent-University in its services and on the contrary, admittedly, the petitioner was appointed as a Laboratory Incharge on honorarium basis by the Head of the Department of Chemistry, who has got no authority to appoint / engage any person in the services of the University. Thus, it is absolutely clear that the initial engagement of the petitioner on honorarium basis was / is not only illegal but also impermissible in the eyes of law. In this



regard, the learned Single Judge has rightly referred to the Full Bench judgment of this Court rendered in the case of **Ram Sewak Yadav vs. The State of Bihar**, reported in **2013(1) PLJR 964**, which has also taken into account the judgments rendered by the Hon'ble Apex Court in the case of **Secretary, State of Karnataka vs. Umadevi**, reported in **(2006) 2 PLJR 363** and the one rendered in the case of **State of Karnataka & Others vs. M.L.Kesari**, reported in **(2010) 9 SCC 247**. It is a well settled law that any appointment made in violation of Article 14 of the Constitution of India without proper advertisement and without resorting to proper selection process is void and cannot be regularized. It would also be pertinent to mention here that the reliance of the appellant on paragraph no. 7 of the counter affidavit in question is also misplaced inasmuch as the case of the petitioner stands distinguished since it has been stated that the appellant's case is not like others where proper advertisement and interview process was undertaken.



Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, We do not find any infirmity in the impugned order dated 6.8.2018 passed in CWJC No. 1360 of 2015, by the learned Single Judge of this Court, hence, the present appeal stands dismissed.

(Rajan Gupta, J)

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.8.2022
Transmission Date	NA

